

NAVAL POSTGRADUATE SCHOOL Monterey, California



THESIS

**AN ANALYSIS OF THE CONTRACTING PROCESS USED
BY THE NATIONAL ARMED FORCE OF VENEZUELA**

by

Yovany E. Rodriguez

June 2000

Thesis Advisor:
Associate Advisor:

David V. Lamm
Jeffrey R. Cuskey

Approved for public release; distribution is unlimited.

20000804 177

REPORT DOCUMENTATION PAGE

Form Approved OMB No. 0704-0188

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188) Washington DC 20503.

1. AGENCY USE ONLY (Leave blank)	2. REPORT DATE June 2000	3. REPORT TYPE AND DATES COVERED Master's Thesis
---	------------------------------------	--

4. TITLE AND SUBTITLE: An Analysis of the Contracting Process Used by the National Armed Force of Venezuela	5. FUNDING NUMBERS
--	---------------------------

6. AUTHOR(S) Rodriguez, Yovany E.
--

7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Naval Postgraduate School Monterey, CA 93943-5000	8. PERFORMING ORGANIZATION REPORT NUMBER
---	---

9. SPONSORING / MONITORING AGENCY NAME(S) AND ADDRESS(ES) N/A	10. SPONSORING / MONITORING AGENCY REPORT NUMBER
---	---

11. SUPPLEMENTARY NOTES The views expressed in this thesis are those of the author and do not reflect the official policy or position of the Department of Defense or the U.S. Government.

12a. DISTRIBUTION / AVAILABILITY STATEMENT Approved for public release; distribution is unlimited.	12b. DISTRIBUTION CODE
--	-------------------------------

13. ABSTRACT (maximum 200 words)
Like many countries around the world experiencing economic problems, Venezuela is suffering from structural reforms. These reforms affect all Government institutions, including the National Armed Force of Venezuela. The Venezuelan structural reforms are based on the restructuring of the public sector, the changing in social, economical and political laws, and the structuring of a new political system according to the new Bolivarian Venezuelan National Constitution. The purpose of this thesis is to analyze the military contracting process for goods and services in Venezuela as well as to identify policies, procedures, and methodologies, contributing to the implementation of the respective contracting process. Once these indicators were identified, this thesis proposes a model procurement system as a more appropriate system in the new Venezuelan legal environment. The model procurement process is explained starting with the initial request for materiel through delivery to the end user. This thesis is a practical, homogeneous and easy reference for the personnel working in the Logistic Command of the Armed Force of Venezuela due to its logical and uniform criteria in the procedures of procurement. In addition, this thesis will be a point of reference to the lawmakers in the National Assembly when they reform or modify the old legislation for acquisition and contract.

14. SUBJECT TERMS Acquisition Process, Defense Procurement, procurement system, legislation for acquisition and contract	15. NUMBER OF PAGES 125
--	-----------------------------------

	16. PRICE CODE
--	-----------------------

17. SECURITY CLASSIFICATION OF REPORT Unclassified	18. SECURITY CLASSIFICATION OF THIS PAGE Unclassified	19. SECURITY CLASSIFICATION OF ABSTRACT Unclassified	20. LIMITATION OF ABSTRACT UL
--	---	--	---

THIS PAGE INTENTIONALLY LEFT BLANK

Approved for public release; distribution is unlimited.

**AN ANALYSIS OF THE CONTRACTING PROCESS USED BY THE
NATIONAL ARMED FORCE OF VENEZUELA**

**Yovany E. Rodriguez
Colonel, National Guard of Venezuela
B.S., Venezuelan National Guard Academy, 1975**

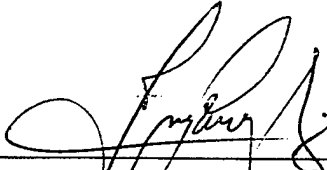
Submitted in partial fulfillment of the
requirements for the degree of

MASTER OF SCIENCE IN MANAGEMENT

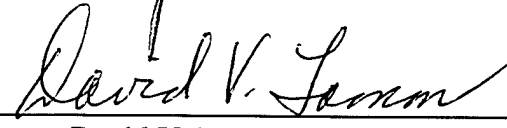
from the


**NAVAL POSTGRADUATE SCHOOL
June 2000**

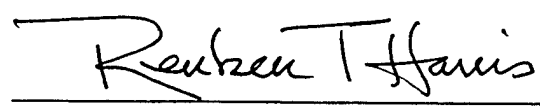
Author: _____


Yovany E. Rodriguez

Approved by: _____


David V. Lamm, Thesis Advisor


Jeffrey R. Cuskey, Associate Advisor


Reuben T. Harris, Chairman
Department of System Management

THIS PAGE INTENTIONALLY LEFT BLANK

ABSTRACT

Like many countries around the world experiencing economic problems, Venezuela is suffering from structural reforms. These reforms represent serious transformations at different levels and all the institutions have been affected with this situation. The Venezuelan structural reforms are based on the restructuring of the public sector, the changing in social, economical and political laws, and the structuring a new political system according to the new Bolivarian Venezuelan National Constitution.

The purpose of this thesis is to analyze the military contracting process for goods and services in Venezuela as well as to identify policies, procedures, and methodologies, which contribute to the implementation of the respective contracting process. Once identified these indicators this thesis proposes a model procurement system as a more appropriate system to the new Venezuelan legal reality. The model procurement process is explained from the initial request for materiel until the acquisition is made and the product is employed.

This thesis is going to be a practical, homogeneous and easy reference to the personnel who work in the Logistic Command of the Armed Force of Venezuela due to it will have logical and uniform criteria from the procedures to follow in procurement. Besides, it will be a point of references to the lawmakers in the Assembly National when they reform or modify the old legislation for acquisition and contract.

THIS PAGE INTENTIONALLY LEFT BLANK

TABLE OF CONTENTS

I. INTRODUCTION.....	1
A. BACKGROUND.....	1
B. RESEARCH QUESTIONS.....	2
C. PURPOSE OF THE STUDY.....	3
D. METHODOLOGY.....	4
E. BENEFIT OF STUDY.....	5
F. SCOPE AND LIMITATIONS	6
1. Scope of the Thesis.....	6
2. Limitations.....	6
II. THE REGULATIVE FRAMEWORK	7
A. LEGAL FRAMEWORK.....	7
1. Constitution of the Bolivarian Republic of Venezuela.....	8
2. Organic Law of the General Comptroller of the Republic.....	9
3. Organic Law of Safeguard and Public Patrimony.....	11
4. Organic Law of National Public Treasury	11
5. Organic Law of the Armed Forces	11
6. Bidding Law.....	12
7. Budgetary Regime Law	15
8. Umbrella Law.....	15
B. REGULATORY FRAMEWORK.....	16
1. Regulation of the Comptroller General of the National Armed Force.....	17
2. Regulation for the Acquisition of Goods and Services for the NAF.....	19
C. ORGANIZATIONAL FRAMEWORK.....	20
1. National Armed Force.....	21
2. The Citizen Power.....	23
3. The Comptroller General of the Republic Office.....	23
D. SUMMARY	23
III. VENEZUELAN PROCUREMENT PROCESS.....	25
A. BASIC POLICIES.....	25
B. ACQUISITION PHASES.....	27
C. FUNDING.....	30
D. PROCUREMENT METHODS AND SOURCE SELECTION.....	32
1. Good and Services Acquisition.....	32
2. Construction.....	33
E. CONTRACT ADMINISTRATION.....	35
1. Need Identification and Origin.....	35
2. Assigned Budget Performance.....	35
3. Data Analysis and Collection by the Source Selection Committee.....	35
4. Economical and Financial Evaluation and Estimation of Price.....	36
5. Awarded Contract.....	36
6. Fiscal Control.....	36
7. Perceptive Control and Closeout.....	36
F. CONTRACTING PROCESS.....	37
G. GUARANTEES.	40
1. Bid Guarantee	40
2. Reliable Fulfillment Guarantee.....	40
3. Advance Guarantee	41
4. Quality Guarantee.....	41
H. FISCAL CONTROL.....	41

1. Previous Control.....	41
2. External Control.....	42
3. Later Expenditure Control.....	42
4. Management Control.....	42
I. MISCELLANEOUS.....	43
1. The Reserve Funds.....	43
2. Public Credit.....	43
3. Investment Fund of Venezuela.....	44
4. Foreign Military Sales.....	44
5. Special Administered Advance.....	44
J. SUMMARY.....	45
IV. FACTORS INFLUENCING THE PROCUREMENT PROCESS IN VENEZUELA.....	47
A. INTRODUCTION.....	47
B. FACTORS.....	48
1. Political Factor.....	48
2. Social Factor.....	49
3. Military Factor.....	51
4. Budgetary Factor.....	53
5. Legal Factor.....	55
C. SUMMARY.....	55
V. MODEL PROCUREMENT SYSTEM PRINCIPLES.....	57
A. CONCEPTS.....	57
B. POLICIES.....	59
C. OBJECTIVES.....	60
D. GOALS.....	62
E. PROCUREMENT ORGANIZATION.....	62
1. The National Procurement Service	63
2. The Central Logistic Command of the Venezuelan Armed Force	66
F. THE ACQUISITION PLANNING PHASE.....	73
G. THE CONTRACT FORMATION PHASE.....	77
H. THE CONTRACT ADMINISTRATION PHASE.....	80
1. Initiation of Work and Modification.....	81
2. Quality Assurance.....	82
3. Payment and Accounting.....	83
4. Intellectual Property.....	87
5. Contract Closeout or Termination.....	87
I. SAFEGUARD.....	88
J. SUMMARY.....	91
VI. CONCLUSIONS AND RECOMMENDATIONS.....	93
A. INTRODUCTION	93
B. CONCLUSIONS AND RECOMMENDATIONS.....	93
C. ANSWERS TO THE RESEARCH QUESTIONS.....	101
1. Primary Research Question.....	101
2. Secondary Questions.....	102
D. SUGGESTIONS FOR FURTHER RESEARCH.....	105
LIST OF REFERENCES.....	107
BIBLIOGRAPHY.....	109
INITIAL DISTRIBUTION LIST.....	111

LIST OF FIGURES

1. Comptroller Organization Chart.....	17
2. Acquisition Framework of the NAF.....	26
3. Venezuelan Armed Forces Acquisition Phases.....	29
4. Source Selection Method.....	32
5. The Contract Process.....	39
6. Proposed Model Procurement System.....	58
7. Proposed National Procurement Service.....	65
8. The Proposed Central Logistic Command Organization.....	70
9. Director of Acquisition and Contracts Organization.....	72

THIS PAGE INTENTIONALLY LEFT BLANK

ACKNOWLEDGMENTS

The author wishes to thank many people for their assistance and patience. I am in debt to Professor David Lamm for his scholarly guidance in formulating the idea for this thesis. In addition, I want to thank CDR. Jeffrey Cuskey for his assistance in revising this research. Also, I would like to thank Elizabeth Summe for her perseverance in editing this work. I will always value the support of my sons, Leuris and Leonel, and my niece Marlyn, who sacrificed family time to provide the means to complete this academic obligation.

Finally, I must express gratitude to my mother, Maria, who sacrificed so much for me during my life, and because of her, I am finishing this work today.

I. INTRODUCTION

A. BACKGROUND

Venezuela has been suffering from structural, political and legal reforms since December 30, 1999 when the new Bolivarian Venezuelan National Constitution was promulgated by the National Assembly Constituency. These reforms, involving public and private sectors, represent serious transformations at different levels. For this reason all institutions have been affected, causing changes in their organizations, and in the policies and administrative processes of the political and economical life of Venezuela.

The area of procurement will also be affected by the reforms, the actual procedures followed by Venezuela for government procurement are in general backwards, in spite of the fact the actual Law has had certain success in satisfying needs for goods and services. Regardless, some factors in the Venezuelan procurement process must be changed in order to adapt them to the new legal reality. The exceptionality of Venezuela's new National Constitution will be able to be observed through the analysis of the innovative articles of the new National Constitution, which should develop a new legislation for procurements and contracts, serving as foundation for a new Bidding Law for all procurements or a similar body of such rules for Venezuela.

Based on these premises it is important to analyze the procurement process in the Venezuela's public administration, and to search for possible solutions to the problematic situation through proposals that can help to change old schemas in purchase philosophy and contract pattern.

Moreover, the old processes need to be analyzed to determine what happened in the past concerning the inefficient and large bureaucratic processes that slowed the award of contracts and caused corruption and problems of bribery.

Thus, I consider it timely to present a model proposal of contracting with modern ideas of pricing, especially funding in the congressional budget, market research, acquisition strategy, source selection, multiyear procurements, negotiation, and the cost as an independent variable, which will allow the government to obtain advantages not only in the procurement process with the potential contractors, but also to contribute to the petroleum business where Venezuela is an important exporter.

In addition to these benefits, the government will have a tool clearly showing the appropriate management of money to the taxpayers. Therefore, in upcoming chapters general ideas are given about a proposal for contracting in Venezuela, assessing and comparing other foreign procurement processes whose procedures are suitable for the changes required by the procurements in Venezuela. Finally, I will present a model process system to contract goods and services for the National Armed Force of Venezuela.

B. RESEARCH QUESTIONS

The primary research question is "What are the essential elements of the model procurement process for the National Armed Force of Venezuela and how might the procurement process be improved?"

Secondary questions:

1. What is the current procurement process for the Armed Force of Venezuela?
2. What concepts and factors are necessary in a model procurement process?
3. What issues must be resolved in order for the current Venezuelan Armed Force procurement process to be fashioned after the model procurement process?
4. What significant action must be achieved in order to reform the Venezuelan procurement process in line with the model procurement process?

C. PURPOSE OF THE STUDY

As a single case study, this thesis will argue that the contracting process in Venezuela has had many managerial faults, making it vulnerable to breakdown. From my viewpoint, it is difficult to analyze this situation because many people involved in the procurement process are not professional. Nevertheless since the beginning there have been weaknesses in personnel where the majority are not knowledgeable about the procurement process, or they have confused the contract process with a simple legal issue or legal document, forgetting the serious administrative procedures that eventually lead to the final goal of all acquisition.

The main hypothesis of this thesis is that in spite of the relative success of the contract process in Venezuela, some steps require changing or adapting in administrative management. The contract process has many administrative drawbacks that can be improved through a new legislation made by the National Assembly.

The uniqueness of the Venezuelan case creates an ideal scenario for testing an acquisition reform environment with all constraints that change process being experimented by Venezuela so far. In this thesis, I will suggest to the government, the use of an integrated approach comprised of rational, cultural, and institutional perspectives, with Venezuela being a unique scenario, for testing the new laws with a modern managerial process of acquisitions.

D. METHODOLOGY

The methodology used in this research consist of three basic procedures:

1. A review of pertinent literature such as theses, research from the internet, books, databases, newspapers, class and reading materials.
2. A review of Venezuelan laws, the Federal acquisition Regulation (FAR), and in general, all legal literature on this matter.
3. Questionnaires (opinion poll) to the following sources:
 - The Chief of the Defense Staff of the Armed force of Venezuela through the Logistic Director
 - The Army General Commandant of Venezuela
 - The National Guard General Commandant of Venezuela
 - The Comptroller General of the National Armed Force
 - The Logistic Commandant of the National Guard of Venezuela
 - The Acquisition Director of the Army
 - The Planning and Budget Director of the Ministry of Defense
 - The Public Finance Director of the Ministry of Finance of Venezuela

- The Contract Director of the Ministry of Defense
- The Contract Director of the Air Force
- The Contract Director of the National Guard
- The Contract Director of the Army
- The Contract Director of the Navy
- The Military Expenditures Control Director of The Comptroller General of the National Armed Force
- The Military Attaché of Venezuela in Washington

The descriptions and ideas in this thesis have resulted mainly from researching relevant literature to provide a broad background and understanding concerning the acquisition process in Venezuela, along with how the process can be improved. Qualitative data was performed based on questionnaires completed by the highest authorities associated with procurement process in the National Armed Force of Venezuela.

E. BENEFIT OF STUDY

This thesis is going to be a practical, homogeneous and easy reference for personnel who work in the Logistic Command of the Armed Force of Venezuela because it will provide logical and uniform criteria to follow in the procedures of procurement. Additionally, it will be a point of reference to the lawmakers in the National Assembly (the national legislative body's new name) when they reform or modify the old legislation for acquisition and contract.

F. SCOPE AND LIMITATIONS

1. Scope of the Thesis

The core research proposes a manual that contains procedures to follow in the contract process for the Armed Force in accordance with the recently developed legislation. In addition, such procedures can be useful to other organizations of Venezuelan public administration since many processes have a similar legal process in their acquisitions.

2. Limitations

This thesis examines, exclusively, the contract process performed in the Armed Force of Venezuela through the public credit or appropriation obtained in accordance with the budgetary limitations, which have the following sources:

- Law that authorizes the executive to contract and execute public credit operations.
- Budgetary credits allocated to the Defense Ministry by way of the annual Law of Budgetary Regimen.
- Reserve Fund of the Defense Ministry.

This research will focus on a model procurement process system for the Armed Force of Venezuela, taking many references from the model procurement process in the United States. However, the study does not include or address a whole analysis of the American procurement process because this process would be a research paper in itself.

II. THE REGULATIVE FRAMEWORK

A. LEGAL FRAMEWORK

Administrative contracts respond to fundamental characteristics such as contract validity conditions, the element of subordination and the public law regime. Like all contracts, the administrative contract is an agreement between the parties; therefore, the consent is a required condition for that contract to have validity [Ref. 1: p. 2] Thus its objective must be possible, lawful, determinable and linked to the conditions of the contract's existence. It is important to point out the element of subordination because when the government contracts with the government contractor, the contractor is placed in a subordinated position or in legal inequality. This occurs since the contractor pursues a private goal (economical) whereas the Government pursues a service goal from the perspective of public interest.

In Venezuela, the principle of written law prevails. Therefore, a precedent is considered an auxiliary or subsidiary source of law. Court decisions are not sources of law, but the interpretation of them can be used as reference. When there is no written law, the civil code considers analogy and the principles of law as formal sources of law.

The judicial regime applicable to the contracts of the public administration is mixed, from public and private laws; therefore, the contracts are ruled by both. Thus, an administrative contract can not be ruled intrinsically by private law for people of private interests, but by public laws, where the authority of public contracting must have legal

competence according to the legal power conferred to consolidate the contract [Ref 1: p. 3]

Afterwards, this allows a contract in the Armed Force of Venezuela and, in general, in all the public administration to be carried out within a legal framework, which controls the process taking place in the administrative legality and in mandatory fulfillment. Thus, the following laws have connection with the acquisition process of goods and services in the National Armed Force.

1. Constitution of the Bolivarian Republic of Venezuela

The new Venezuelan Constitution, enacted by the National Assembly on December 30th of 1999, essentially keeps a similar system to the old Constitution of 1961, but with more discretionary power by the State. This wide range of power, which the constitution concedes to the State, is the reason to search for necessary elements in making special laws for the contract process and for the decision-making of investment in Venezuela.

The new Constitution states the people's rights to live and duties in Venezuela, defines the nation's structure and organization, and the Public Power's function. However, the newness of this legal tool becomes an impediment, in its turn, for the definitive analysis of the present procedures still contained in former laws. This impediment will continue until such time as the new National Assembly develops the laws and decisions in harmony with this Constitution. Notwithstanding, the new Constitution already incorporates diverse norms for generating a major legal security,

such as the rights of protection, the public responsibility of employees, the mending act for part of the State, and the up-front process of information from public organization. In general, rules and norms for justice have a more unambiguous and trustworthy basis. Finally the Constitution promotes the arbitration, conciliation, and whatever other alternative means exist for conflict solution, in order to provide norms that strengthen the legal security, in the case of contract process, related to the Fiscal Budgetary Regimen.

The fiscal management is ruled through efficiency, solvency, accountability, liability, and fiscal principles. It has equality in the multiyear budget framework where ordinary incomes are enough to cover the ordinary expenditures.

The law decides limits of the public debt according to the size of the economy, financial investment and the capacity for acquiring incomes used in the payments of the public debt. In other words, this law accomplishes fiscal equilibrium and puts limits on national debt, which can be generated through the Law of Budgetary Regimen and the Law of Public Credit, approved by the National Assembly. According to the presentation of the multiyear budget framework, which is in the project of Budgetary Regimen Law and the project of Public Credit Law, the government should explain the long term objectives in the fiscal policy and demonstrate how these objectives will be achieved in connection with the liability and fiscal equilibrium principles.

2. Organic Law of the General Comptroller of the Republic

The current law was enacted on December 13th of 1995 and established the control function of the National Public Finance with constitutional rank of functional autonomy. The fundamental aspects of this law are foreseen in the oversight and

inspection functions, internal control and those under oversight of the organization. The Comptroller General of the Republic is an autonomous organization with its own budget and personnel; the selection of Comptroller depends on the National Assembly.

By the same token, the legal core in the Organic Law of the Comptroller General of the Republic is the control that established different kinds of control namely: previous control, posterior control, security and defense expenditure control, and management control.

- Previous Control is exerted at any time by the Comptroller Office or by mandate of the National Assembly.
- Posterior Control is exerted through audits, price and cost analysis or in any way considered by the Comptroller Office.
- Security and defense expenditures control is exerted on those ministries that manage these expenditures like the Ministry of the Interior, the Foreign Ministry, the Ministry of Defense, and the Ministry of Finances.
- Management control is exerted through audits, economical, financial and statistical analysis of developed programs, evaluation of plans, costs and efficiency results.

In accordance with this law, the Comptroller General of the Republic is the chief organization for the systems of external and internal control of public administration; in addition, it takes charge of administrative investigation when facts imply responsibility of public employees. As a result of this, the office of the Comptroller also makes decisions proposing tougher punishment for public employees convicted of corruption, where the

usual punishment is a fine or dismissal, however when the investigation determines criminal facts The Comptroller Office sends the proofs to the court.

3. Organic Law of Safeguard and Public Patrimony

The purpose of this law is to prevent, hunt and punish illegal enrichment and crimes against taxpayer's money and to take charge of penal, civil, administrative and disciplinary responsibility of public employees and other people pointed out in this law.

4. Organic Law of National Public Treasury

This law ordains legal dispositions related to public incomes, goods and debt, which form the assets and liabilities of the Republic as well as the expenditures of the National budget. This law establishes tributary and economical ruling norms about taxes, incomes, and offenses against the National treasury.

5. Organic Law of the Armed Forces

The current law establishes the legal framework that rules the Armed Forces. However, the new National Constitution entirely changed the organization and functions of the Armed Forces, which as a consequence will require a new law for the military organization.

In the first place, the military organization in the new Constitution changed its name to "National Armed Force" [Ref. 4: art. 328] and all of the Commands of Forces were unified globally under a administrative unity which continues to respect the mission of the individual forces, even though the administration must work in an integral way looking for common objectives. Second, the National Armed Force (NAF) will take

charge of making regulations for controlling production, importation, exportation or commerce of weapons and explosives. Furthermore, the new Constitution implemented administrative functions and criminal investigation faculties for the police. Lastly the NAF members have right to the suffrage (vote) [Ref. 4: art. 330] Because of these constitutional changes it is necessary to change the old law of the NAF too.

6. Bidding Law

The reason for this law is to apply the source selection procedures for acquisition and contracting of goods and services (including construction) in the public sector. In addition, it defines contract, contractor, professional services, classification and other concepts referred to acquisition and contract in the public sector of Venezuela.

In the same way, in the Venezuelan Bidding Law carries the “Accountability Principle”, which rules the procedures established by bidding conditions, characteristics of goods, publications of press, protection of the national production, bidding cancellation, and so on.

Subsequently, the National Contracting Service was included in the reformed Bidding Law as an organization under the Ministry of the Commerce and Production, which exerts the technical authority in contracting and purchasing matters [Ref. 3: art. 51-54]. The procedures of this organization are not clear, so far, because the law refers to a regulatory framework not made yet by the Executive. The National Contracting Service takes charge of the organization of Venezuelan Registry of Contractors where all government contractors must be registered.

Afterwards, the Bidding Law sets up the bidding committee composed of an odd number of members who are appointed by the authority of the purchasing office. In this bidding committee the judicial, technical, and economical areas must be represented. Next, The Bidding Law predicates source selection establishing three different procurement methods, which are as follows:

The General Bidding method (full and open competition): This procedure selects contractors in which any contractor registered in the Venezuelan Registry of Contractors can take part in the general bidding if the contractor fulfil with the conditions established in the bidding process [Ref. 3: art. 74]

The Selective Bidding: This is the procedure to select contractors in accordance with the assumptions established in the law, which are [Ref.3: art. 75]:

- If the purchase is a good acquisition directed towards a highly specialized experimentation or investigation [Ref 3: art. 76 a]
- If reasons are qualified by the Organic Law of the General Comptroller of the Republic as State Security Affairs [Ref 3: art. 76 b]
- If there are five or less contractors that have the same good or service in accordance with the Venezuelan Registry of Contractors [Ref. 3: art. 76 c]

The direct adjudication: This procedure directly awards contractors without formal selection, from the source selection process, but the highest contracting authority must justify the selection through an explanatory document by means of the following assumptions [Ref. 3: art. 79]:

- If the required supplies are important in the development of a determined productive process that could be delayed by a source selection process.
- If there is an acquisition of artistic or scientific goods.
- If there is only a contractor who is authorized by the Venezuelan Registry of Contractors or a technical condition that excludes the good or service from all competition possible.
- If there are goods, products, or services acquisitions where it is not possible to apply the source selection procedures due to the conditions of supply imposed by the contractors.
- If there are calamities or disasters that affect the country or proven emergencies inside the purchasing organization.
- If contracts are considered rescinded or terminated and a delay in the source selection process could be detrimental for the procurement office.

It is important to point out that the explanatory document must be passed by the Controller General of the Republic who has the discretionary faculty to approve or disapprove the referred document. Under these circumstances, the legislator tried to stop the contract from going through this source selection step which is considered an inappropriate shortcut, but at the same time it sets up obstacles for the contracting office when they actually need to perform urgent purchases.

Additionally the Bidding Law establishes the International Bidding, a procedure to select internationally announced contractors when the purchasing office requires

products or services through full competition between national and foreign contractors
[Ref. 3: art. 81]

The Bidding Law also covers aspects such as steps for evaluation, bids, awarded offerors, desert bidding declarations and sanctions. Lastly, the law observes rigid procedures where hierarchical resources (authority) interfere in the whole process and where the law is too general for the simple reason that the norms do not focus on the real process of purchase. As a matter of fact, the law focuses on bidding processes and controls to be performed by the Comptroller General entirely forgetting that the objective is to provide acquisitions or services that require accurate procedures to avoid mistakes in the process, hesitation in decision-making, loss of money, or the commission of corrupted acts, due to lack of specific norms or necessary rules for making clear procedures in the acquisition process of Venezuela.

7. Budgetary Regime Law

According to Budgetary Regime Law, it is the responsibility of the Executive through the Ministry of Finance to present the project of budgetary annual law to the National Congress, during the month of June in the year before to the assigned year. Once the Congress approves, the law is enacted and at the same time it is distributed by fulfillment.

8. Law that authorizes the executive to contract and execute public credit operations (Umbrella Law)

This is a law enacted by the National Assembly each fiscal year where the executive contracts operations of public credit from internal and external sources with

authorized amounts calculated to a referential exchange of foreign exchange, normally dollars.

Actually, the executive is authorized to contract loans with national or international financial institutions or to emit titles of public debt in bonds, promissory notes or bill of exchange. These financial titles are used to pay the obligations assumed by the Republic in the performed contracts during a determined fiscal period.

B. REGULATORY FRAMEWORK

The national level of legislation is made up of organic and ordinary laws that the National Assembly enacts in order to become a lawful body. But these laws have a general content that requires other norms regulated by specific procedures called regulation to be enacted by the Executive to whom the National Constitution reserves legislation over related or specific subjects “by their kind or nature pertain to it” [Ref. 1: p. 25]

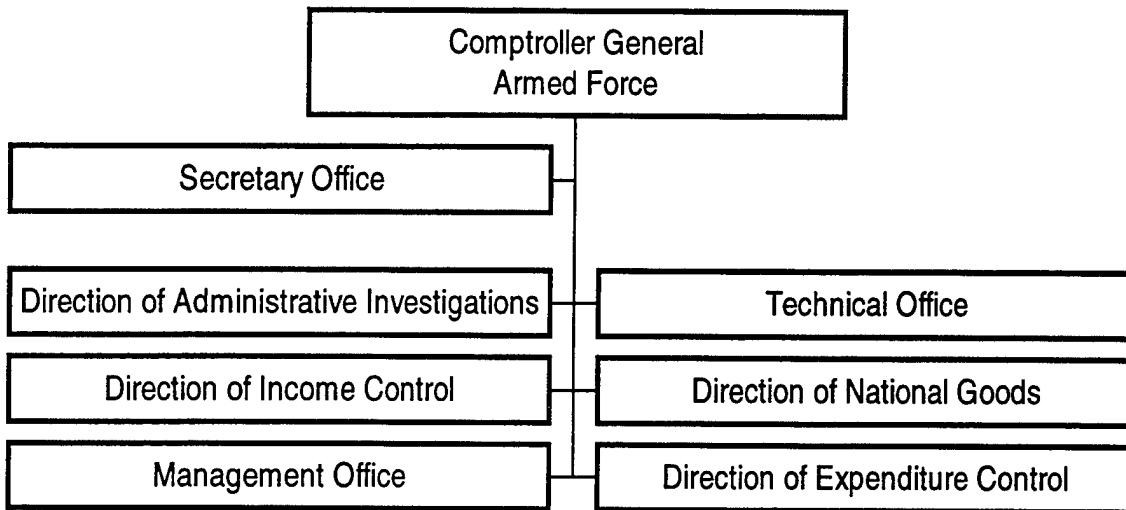
As a result, due to the fact that the regulation framework is the written norm that affects defense procurement, this regulation framework plays an important role in Venezuela’s Armed Force procurement process. It is important to mention this statement because contracts, nowadays, depend basically on their legal structure inasmuch as the milestones and controls spend a long time on this issue [Ref. 2: p. 20-21]

1. Regulation of the Comptroller General of the National Armed Force

This regulation defines its organization and the functions of control, surveillance and oversight of budget and expenditures in the Venezuelan Armed Force. Figure 1 shows the current Comptroller General of the Venezuelan Armed Force Organization.

Figure 1

Comptroller Organization Chart



Source: Comptroller General of the Armed Force of Venezuela.

The new National Constitution award to the Comptroller General of the National Armed Force the oversight faculty, fiscal and control of incomes, expenditures, and public goods belonging to the military organization. This control is performed without forgetting that the maxim Controller organization, the Comptroller General of the Republic exists.

In addition to this, The Comptroller General of the Armed Force is designated by contest under the foundation of being honorable, capable, honest, and with knowledge in the area. The military Comptroller organization is the following:

- Management Office: It manages the budget of incomes and expenditures related to the Comptroller General office and assigns personnel to the different departments.
- Technical Office: It designs the control systems required by the Comptroller General of the Armed Force besides coordinating the training of the personnel in the Comptroller office.
- Director of Administrative Investigations: It performs the administrative investigation and determines if there have been committed acts of corruption. It advises the Controller General on what sanction should be applied and coordinates with the appropriate authority for making decisions derived from administrative investigation.
- Director of the Income Control: It controls the incomes assigned to autonomous services, foundations, associations, societies, enterprises, and other organizations that produce incomes for the Ministry of Defense (MOD.) It participates in the source selection process as the observer of organizations mentioned above. It performs the management control of all departments and organizations subject to surveillance, oversight and control for evaluating performed plans and programs.
- Director of Expenditure Control: It performs the previous control to the goods and services acquisitions in the MOD. It participates in the source selection process promoted by the MOD. It analyzes contracts, financial agreements of contracts put in

practice with public credit. It performs perceptive control and revises the customs operation related with foreign goods bought by the Armed Force.

- Director of National Goods Control: It performs the surveillance, oversight and control of use, management, maintenance, recovery and disposal of all the national goods belonging to the Armed Force.

In the end, these directions are actively involved in the Venezuelan Procurement Process from the need determination to the disposal of goods.

2. Regulation for the Acquisition of Goods and Services for the National Armed Forces.

This regulation appoints norms and procedures related to the goods and services acquisition in the military organization. Additionally it starts the description of the process by ordering each General Command and/or the head of each service to solicit permission from the Minister of Defense to initiate acquisition projects. If it is not covered by the current budget, once the studies are finished, the Logistic Commands or Chiefs of Service present the Minister with a project reflecting the employment, logistics, technical capabilities, and financial requirements to explain the need and benefits of the acquisition. After that, the Minister of Defense presents the project with the opinion of the Joint Chief of Staff Office to the Superior Board of the Armed Forces.

This consultative organization evaluates the project in function of equilibrium of forces (internal and external) and according to the national situation. Once the project is approved, the Minister of Defense sends it to the Comptroller General of the Armed Forces. The Comptroller General of the Armed Forces then performs the previous control

and formulates recommendations according to his function. After this control process of the contract project, the Minister of Defense sends the project to the Minister of Finance who determines the financial aspects of the project based on the government fiscal income and debt.

C. ORGANIZATIONAL FRAMEWORK

Venezuela is designated constitutionally as a republic that "is forever and irrevocably free and independent of any domination or protection by a foreign power" [Ref.4: art 1.] In addition, the Republic is a federal state, and as a consequence of the federal form of the State and for purposes of political organization, the country is divided to a national legislative power, a national executive power, a moral power, and a judiciary power that are attributed respectively to the Congress, the President of the Republic and other executive organs, the new moral power through the General Prosecutor, the People Defender and Comptroller General, and finally to the Supreme Court of Justice and other courts of justice. A distribution of functions with features of separation of powers is therefore provided, even though the Constitution expressly demands collaboration between them for the achievement of the objectives of the nation.

In summary, the contracting process in the Venezuelan Armed Force depends on this organizational structure, because some milestones during the process must be covered by some organizations mentioned in the law.

1. National Armed Force

The National Armed Force (NAF) makes up an institution without political interests, organized by the State to guarantee the independence and sovereignty of the Nation. The Army, Navy, Air Force and the National Guard are integrated into the Armed Force, which operates integrally within the responsibilities of its functions in the fulfillment of the mission [Ref. 4: art. 328]. The head in the NAF is the Minister of Defense within the executive power who also has the maximum responsibility in the procurement process. The MOD is responsible for the execution and overseeing of all procurement process of the NAF through the following organizations: The Commandant of Forces, the Comptroller General of the Armed Force, the General Director of Administration, the General Director of Planning and Budgeting, the General Director of the Services, the Legal Consultant, and the Joint Chief of Staff Office.

The Commandant of Force within their plans of development determine the missions' needs, planning source selection and awarded contracts which are sent to the Ministry of Defense for legal approval and signature.

The Comptroller General of the Armed Force is the organization of the highest level in the internal control of the MOD; therefore, it exerts the control, surveillance and oversight of incomes, expenditures and goods of the NAF. The Comptroller General has constitutional rank and limited functional autonomy [Ref. 4: art. 291]

The General Director of Administration has the mission to coordinate, lead, and orient the financial and administrative activities of the NAF through the systems of budgeting, contracting, acquisitions, accounting, and payment. This director works

closely with the General Director of Planning and Budgeting on implementing the acquisition, contracting and supply systems, and the accounting and budgeting systems.

The General Director of Planning and Budgeting primarily coordinates the planning and budgeting of the NAF as well as the allocation of the financial resources assigned to the defense sector. The Director of Planning and Budgeting coordinates with the General Director of Administration on the economic studies required in order to maximize the use of the financial resources assigned to the defense sector. In addition, this office analyzes the NAF's needs for extra-budget requirements for acquiring weapon systems, equipment, and other war materiel.

The General Director of the Services is responsible for providing in line with demand the required common defense materiel for the performance of the NAF's mission as well as the planning of new material or technology coordinating the required contracts with the industry.

The Legal Consultant has the responsibility to review the contract projects and to provide a legal opinion, if necessary in writing, before obtaining the Minister's signature.

Finally, the Joint Chief of Staff Office is responsible for determining the strategic and logistical justification of the weapon system or materiel to be procured. This last case occurs only when the expenditures are caused by purchases that can change the equilibrium among the forces, or when the equipment is considered strategic in the long, term besides requiring financial resources from public credit.

2. The Citizen Power

The Republican Moral Board, shaped by the People Defender, the General Prosecutor and the Comptroller General of the Republic exercise the Citizen Power. The Republican Moral Board's mission is, in accordance with the Constitution, [Ref. 4: art. 273 and 274] to prevent, investigate and punish facts that outrage the public ethic and administrative moral and to keep watch over the legality and management of the public patrimony.

3. The Comptroller General of the Republic Office

The Comptroller General of the Republic Office is the organ of control, surveillance and oversight of the incomes, expenditures, public national goods as well as its operations. It is the auxiliary organization of the Venezuelan National Assembly with the constitutional function to oversee the public administration; even though, it possesses functional, administrative and organizational autonomy.

D. SUMMARY

This chapter provided an overview of different frameworks playing a role in defense procurement structure, and how these frameworks influence the processes. The chapter also created points of reference regarding individual positions and responsibilities that will affect the development of the procurement process especially during the milestone approval when the control organization spends a long time in the decision-makings.

The next chapter will provide an overview of procurement process based on the frameworks used in this chapter. This chapter is also dedicated to the discussion of the

Venezuelan procurement philosophies giving emphasis to the legal position that is presumed to be due to the reality of its economical situation.

III. VENEZUELAN PROCUREMENT PROCESS

A. BASIC POLICIES

The acquisition process of goods and services in the NAF is framed within the development plans of the Nation. Consequently, the public management vision in accordance with the IX Nation Plan (1994-1999) sets forth the NAF's compromise as:

....to improve the available resources management for achieving the optimization of equipment, and systems more from the qualitative than the quantitative viewpoint... [Ref. 5: p. 17]

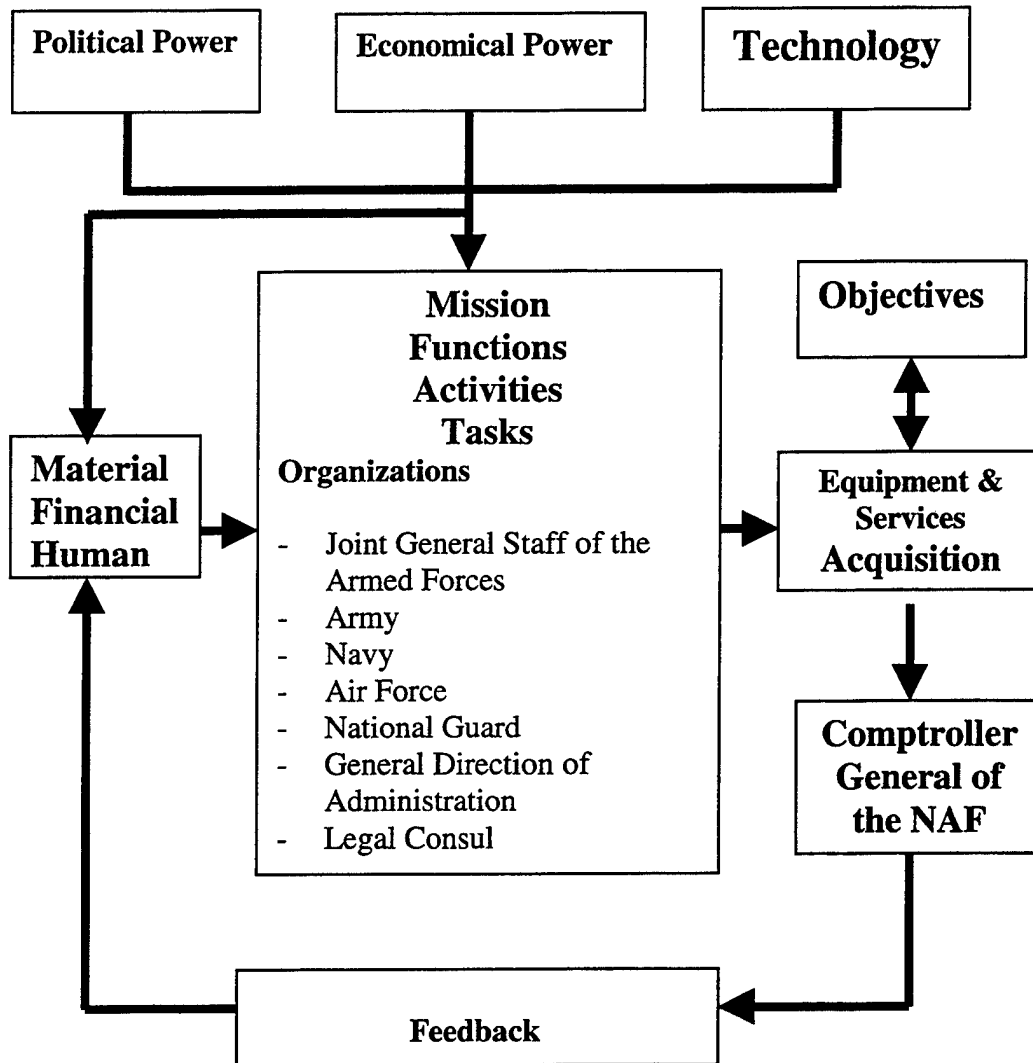
The IX Nation Plan points out the use of the logistical and technical capability of the NAF in aspects of tactical military such as developing productive activities for the optimization of the logistical system and maintenance of war time materiel in order to achieve the purpose of the National security and defense.

The process is based on legal procedures and norms that allow the procurement offices to channel the contracting process under administrative, financial, technical and legal parameters for the efficient and effective achievement of its programmed objectives. The budgetary planning is a fundamental process that links the budgetary tenure with short and long term plans, and the programs must adhere to the strategic objectives and guidelines established at the national level of annual operative plans ensuring the appropriate use of assigned resources. Figure 2 depicts the current framework for the acquisition of goods and services of the NAF

One of the most important issues in the use of assigned resources is management control, which evaluates the fulfillment of established plans and programs as well as

tracing objectives and goals. This function is assumed by the Comptroller General of the Republic through statistical studies and analysis to determine the results of the managerial process [Ref. 6: art. 6]

Figure 2
Acquisition Framework of the NAF



Source:

Developed by Researcher

B. ACQUISITION PHASES

The acquisition phases in the NAF are performed through the Regulation for the Acquisition of Goods and Services for the National Armed Force, which establishes the procurement of major systems in the Armed Force of Venezuela. Even though this regulation covers only the procurement process for weapon systems acquired by public credit, this regulation is considered the foundation for performing acquisition in the Armed Forces. This is due to the fact that the NAF has been constrained from making weapon acquisitions from the current budget. Therefore, the only source of funds for procurement and maintenance of weapon systems is public credit or debt.

This regulation describes the steps for the acquisition process. In spite of the fact that the Venezuelan Defense Organization does not have any document defining the acquisition phases, the NAF uses this presidential decree to develop the acquisition phases and milestones during the procurement process.

In fact, the procurements in Venezuela are almost always mature systems [Ref. 7: p. 29], which are reduced to three phases in the acquisition process: Phase 0 includes need requirements, analysis, evaluation and approvals; Phase I includes approval of authorities; and Phase II includes production, acquisition deployment, and initial operational capabilities.

The regulation initiates the description of the process by ordering each Service and/or the Logistic Command of each Force to solicit permission from the Minister of Defense to initiate acquisition projects not covered by the current budget [Ref. 10: art. 4]. Once the studies are finished, the Commandants of the Force or the Chiefs of Service

present the Minister with a project reflecting employment, logistical, technical capabilities, and financial requirements explaining the needs and benefits of the acquisition. In response the Minister of Defense sends the acquisition project for analysis to the Joint Chief of Staff Office. The Joint Chief of Staff Office, at that moment, generates a strategic and logistic study and issues a statement about the project based on the General Plan for Development of the NAF.

After that, the Minister of Defense presents the project, with the statement from the Joint Chief of Staff Office, to the Superior Board of the NAF. This consultative organization evaluates the project on its function of equilibrium of forces (internal and external) and its harmony with the national situation. Once the project is approved, the Minister of Defense sends it to the Comptroller General of the Armed Forces [Ref. 10: art. 10]. The Comptroller General of the Armed Forces then performs the previous control making a legal, technical and price analysis, and formulating recommendations congruent with his legal function.

Upon this evaluation, the Minister of Defense sends the project to the Minister of Finance who works on the financial aspects of the project, with a parallel financial contract, through international entities of exportation credit based on the Government fiscal income and long term debt.

Once the project reaches this point, the MOD's General Director of Administration revises the project and confirms with the Ministry of Finance that funds are available for the project. After confirmation, the financial project is sent to the President in Ministry Council for consideration (rarely are the projects rejected at this

C. FUNDING

The planning of economical and social development constitutes one of the most important responsibilities in the public sector. The planning system contains diverse instruments to carry out specific functions, within these is the operative plan, which corresponds to firming up the short and long-term plans. One of the components in the operative plan is the budget of the public sector.

The importance of the budget takes root in the fact that the major part of the State's goals requires the management of financial transactions. The budget expresses in financial terms what the Government tries to do during a specific period, which, for Venezuela, is generally one year.

The annual budget in Venezuela is ruled by Chapter II, Title II of the prevailing Organic Law of Budgetary Regimen (The annual budget law is similar to the U.S. annual appropriation and authorization bills, but are put together in a single document.) From such norms arise procedures, which must procure funds by these means and be presented in the annual Budget Law Project to the National Assembly. [Ref. 7: p.22]

The funds for procurement of defense have two sources; the first is the annual budget, which follows a planning, programming and budgeting phase. The Organic Law of Budgetary Regimen and the Annual Budget Law regulate this process for obtaining funds. The second source of funds is Government debt.

The Organic Law of Public Credit establishes the process for obtaining funds by these means. Additionally, every year Congress enacts a law that authorizes the executive

branch to contract and execute public credit operations during that fiscal year. The Umbrella Law defines the kind of financial operations (financial to long term, treasury letters, treasury bonds and others type of Government financing) that the Government can use in the particular year in order to obtain the approved funds. These operations are authorized following recommendations of the Venezuelan Central Bank and the approval of the finance commission in the National Assembly.

In the process of developing the annual budget, the NAF develops the planning phase based on presidential policies and the Nation's Security and Defense Plan, which is carried out by the National Security and Defense Council. The National Security and Defense Council is composed of the Minister of Defense, the Minister of Interior, the Minister of Foreign Affairs, the Minister of Finance and the Permanent Secretary of the Council who is an active duty General appointed by the President.

After this first step, the programming phase is developed by the Direction General of Planning and Budgeting of the MOD. This programming is based on directives given by the Central Office of Budget (OCEPRE), which is the presidential agency with the overall responsibility of formulating the national budget. Then, the Direction General of Programming and Budgeting of the MOD sends the instructions for developing their respective budgets to each of the Commandants of Force and the Chief of Service.

Finally, the Direction of Planning and Budgeting receives the budget proposal from the General Commands and the specialized Services, and then consolidates the defense sector's budget. This defense budget is presented to the OCEPRE for corrections

and approval and the national budget to the National Assembly is sent for study. The Venezuelan National Assembly through its finance commission studies the budget, making the necessary adjustments. Enfin, the National Assembly enacts the budget for that fiscal year, sending it to the President who signs or vetoes this budget.

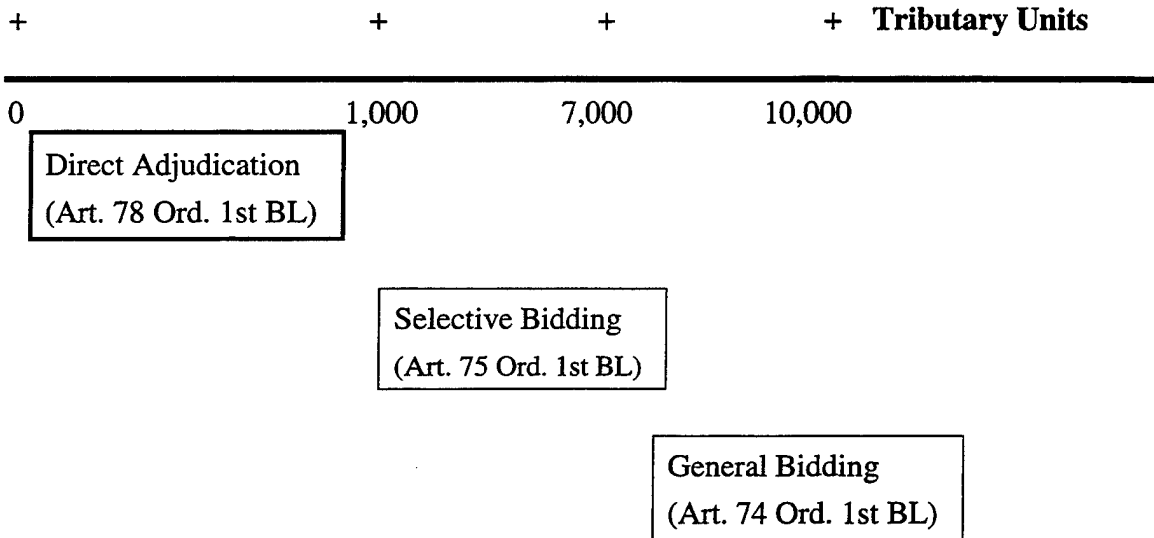
D. PROCUREMENT METHODS AND SOURCE SELECTION

The source selection process in the NAF is ruled by the Bidding Law (BL) which sets forth the procedures for the acquisition and contracting of goods and services (including construction) according to the pattern shown in Figure 4:

1. Good and Services Acquisition

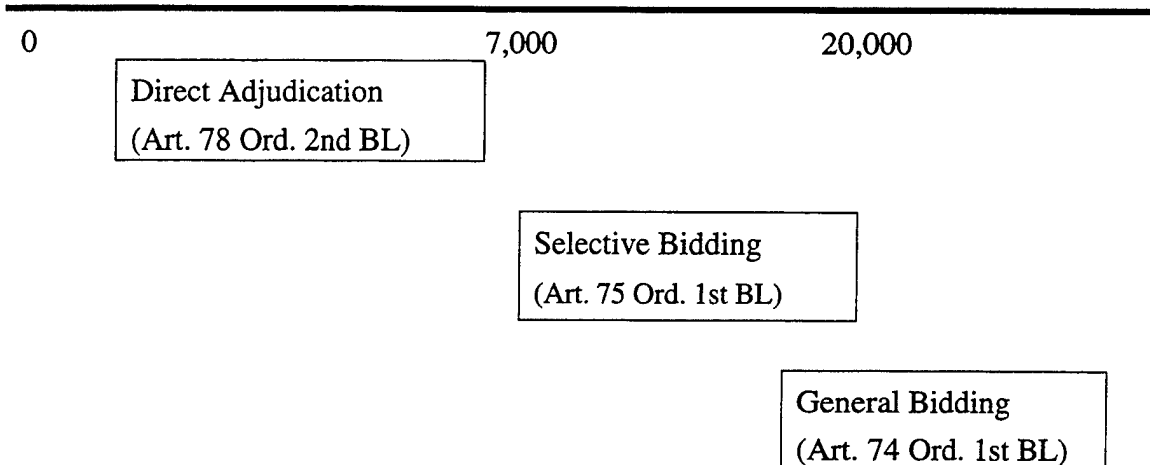
Figure 4

Source Selection Methods



2. Construction

+ + + Tributary Units



Source: Lieutenant Colonel (VAF) Isidro Gutierrez, 1998 [Ref. 2: p. 104]

Updated Researcher

Note:

- (1) Tributary Units are reference for fixing budgetary threshold in source selection [Ref. 3: art. 61].
- (2) Tributary Unit's current value in Venezuelan currency is Bs 9,600.00 which the President can vary it yearly based on the annual index prices shown by the Central Bank of Venezuela. [Ref. 3: arts. 74 -78]

Although the Minister of Defense signs the contracts, the General Commands and the Chief of the Specialized Services are responsible for the procurement method. In this law, three different procurement methods are established. The first is the General Bidding method (full and open competition) where all firms submit their bids in a sealed envelope. In this case, the offeror is only required to be registered as a Government contractor in the Venezuelan Registry of Contractors. This registry is managed by the Contracting National Service, which is responsible for maintaining all the information on Government contractors.

The second procurement method is the Selective Bidding where the Chief of Service or head of the department makes a pre-selection based on recommendations of the bidding committee appointed for the process. The pre-selection of possible offerors is based on the company's technical and financial capabilities of clearly stating an acceptable requirement in a pre-selection process. Once the companies are pre-selected, they can offer their bids based on technical, operational and financial capabilities. These factors, along with the price, are the main considerations in the source selection process.

The third and last procurement method is direct adjudication. This method allows awarding a contract without a formal source selection process by means of the assumptions referred to in the law [Ref. 3: arts. 79]. In order to accomplish procurement by this means, the defense agency must justify and document the reason for considering a particular contractor in the procurement.

All three methods use a source selection committee, responsible for the overall bidding process and for making recommendations to the Chief of Service or the Head of the Logistic Command, who confirms the award granted by the source selection committee.

After approval of the award by any of three methods of procurement, the Chief of Service or the General Commandant informs the Minister of Defense of the award and makes the final adjustments to send the contract to the Comptroller General.

E. CONTRACT ADMINISTRATION

Contract administration is a system consisting of seven sub-systems with a main characteristic of interdependence among all of the sub-systems in the military organization. The subsystems in the NAF are:

1. Need Identification and Origin

The Force Commandant or Service Head identifies the need for a good or service whose acquisition is required for specifying operational characteristics, importance and price estimates in the marketplace.

2. Assigned Budget Performance

Expenditures to be incurred are recorded by the purchasing office through budgetary defense appropriations to cover needs.

3. Data Analysis and Collection by the Source Selection Committee

The Source Selection Committee seeks to obtain the necessary information about Government contractors in the Venezuelan Registry of Contractors. Likewise, it must obtain essential information about the contractor's economical and financial activities, such as the fairness and reasonableness of prices in the bid, product quality, delivery period, and guarantee or assurances that protect the commercial transaction. Additionally, the Source Selection Committee, through the logistics Commands, is responsible for market research, as stated in the Bid Law. Nevertheless this function has never been followed or valued by the military organization, which has allowed the squandering of evaluation tools especially for current prices in the market place. [Ref. 8: p. V-3]

4. Economical and Financial Evaluation and Estimation of Price

This subsystem establishes the amount of goods or services to be acquired in accordance with the threshold and constraints imposed by the dynamics of an economy in crisis. Furthermore, it evaluates the forms of payment and foreign exchange currency costs.

5. Awarded Contract

The Logistic Command Office or the Chief of Service is responsible for awarding the contract in agreement with the Venezuelan laws [Ref. 3: art 109.] This contract is performed between the MOD and the awarded contractor where certain fundamental background information and elements must be included in contract clauses, such as contractor experience and capability, objectives and the purpose of the contract, price, delivery schedule, controls, and warranty.

6. Fiscal Control

The Comptroller General of the Armed Forces and/or Comptroller General of the Republic revise and analyze the contract project as well as the guarantee documents. In addition they approve or disapprove the contract and guarantees from the technical, legal, procedural, administrative and financial viewpoints.

7. Perceptive Control and Closeout

The Comptroller General of the Republic or the Comptroller General of the Armed Forces orders the verification of goods or services that are compared with the

price, bills, invoices, etc. In this step, the settlements of account are finally emitted and the contractor's bond is released.

F. CONTRACTING PROCESS

The acquisition of goods and services in the NAF starts with the determination of needs for each of the Forces, which creates the plan of acquisition for the next year in line with the formalized annual budget law.

As described in the acquisition phases in this chapter, the acquisition project, which includes the contract, follows an extensive series of steps until it is approved and signed by the Minister of Defense. Contracts are always Firm Fixed-Price (FFP.) The defense procurements are based primarily on acquiring mature systems; these mature systems represent advantages not only for the contractor, minimizing risk in developing new products, but also for the Venezuelan Government. In spite of this, the NAF could require a prototype for some equipment to evaluate performance especially in Venezuela due to the terrain conditions or to specific services or functions e.g., telecommunications or computer systems. Therefore, it is important to analyze other contract types that could be used by the NAF in the future. It is also worth nothing that during the procurement process, the contract receives at least six revisions from different agencies involved in the process.

These revisions are the result of fears by responsible heads of agencies to be involved in scandals, and lack of confidence that contracting personnel have in the process [Ref: 7 p. 32]

The following offices perform these revisions:

- Director of Acquisition of the Service or department
- Logistic Commandant, Chief of Service, or head of the department
- Director General of Administration of the Ministry of Defense through the Director of Contract
- Comptroller General of the Armed Force Office
- Legal Consultant of the Ministry of Defense
- Ministry of Finance (examines only financial clauses of the contract and expands the financial contract to include an international financial agency when the contract is funded by public credit)

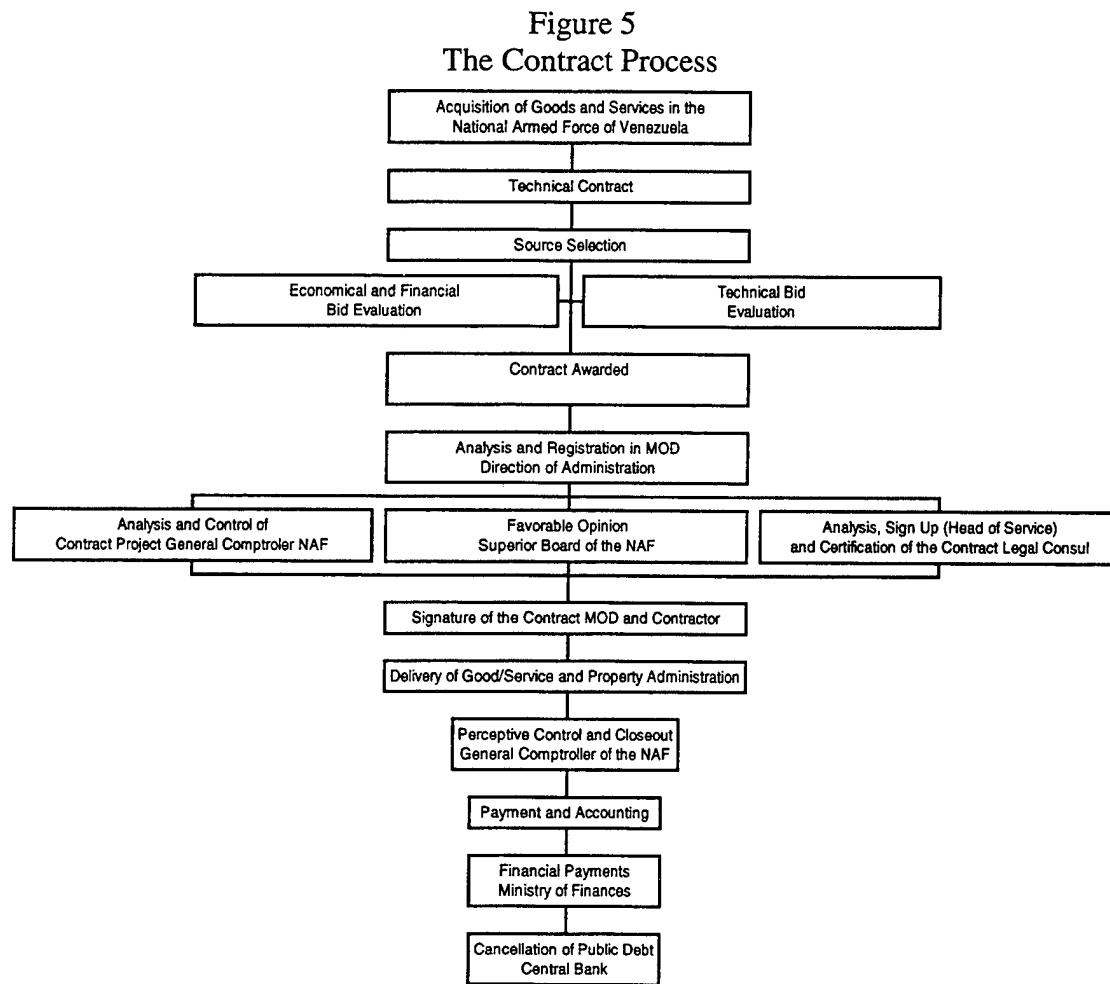
Each of these organizations has specific functions and powers conferred by the legal framework governing accountability in the negotiation process, which starts with the source selection congruent with the Bidding Law. After source selection and award of the contract, the budgetary defense appropriations and written contract are sent to the Comptroller General of the Armed Forces to examine completion of the requirements of the Organic Law of the Comptroller General of the Republic.

Subsequently, the MOD who formally executes the contract signs the contract, which in Venezuela has the financial clause separate from the technical and logistic

clauses (it is an annex to the contract). The financial clause is a contract developed and signed by the Minister of Finance through the General Director of Publics Finance.

After that, the contractor presents warranties and bonds within the fixed period of the contract. These documents are also sent to the Comptroller General for approval.

Figure 5 depicts the contracting process in the NAF.



Source:

Developed by Researcher

Finally, during the delivery schedules the perceptive control is performed; that is the method to check the expenditure's soundness and the authentic existence of the

acquired goods, which must strictly conform with technical characteristics stipulated in the contract. This procedure is responsibility of the Comptroller General of the Armed Forces.

When the Comptroller General approves the perceptive control, the government proceeds to pay the contractor with the appropriate payment instrument (financial to long term, treasury letters, treasury bonds or other government-type payment.)

G. GUARANTEES

A guarantee or surety is an agreement in which a person, called a guarantor, is obligated to pay a bond if the debtor doesn't accomplish its commercial obligations. Three people participate in the guarantee contract: creditor, debtor and guarantor all in accordance with the Title XVIII, Chapter I, from articles 1804 to 1836 of the Venezuelan Civil code.

In order to fulfill the bond, the contractor must present the necessary guarantees in agreement with the conditions established in the negotiation. The guarantees are the following:

1. Bid Guarantee

It guarantees that the awarded offeror will sign up to the contract in accordance with the conditions and terms referred to in the request for proposal.

2. Reliable Fulfillment Guarantee

It guarantees, that all the duties contained in the contract are performed by the contractor in good faith, correctly and in a timely manner.

3. Advance Guarantee

It guarantees the refund of anticipated money given by the creditor referred to in the contract to start the work if the debtor doesn't accomplish its commercial obligations.

4. Quality Guarantee

It guarantees the quality of the delivered equipment during the period between the provisional reception of the goods and the period established in the contract's clauses, which is generally one year. The same foresees the guarantor will indemnify the fixed amount of money for breach of contract, or for failures of the contractor.

H. FISCAL CONTROL

Article 234 in the National Constitution establishes:

It corresponds to the Comptroller General of the Republic, the control, surveillance and oversight of the incomes, expenditures and national goods as well as the related fiscal operations [Ref. 6: art. 234]

Under this context, the Organic Law of the Comptroller General of the Republic designates the kinds of control describes bellow:

1. Previous Control

This provides the mechanism by which internal comptrollers check payment orders or expenditures made by contracts or purchases that imply financial obligation for the Republic. This previous control also includes prices and costs of goods and services required by the Government as well as the Government contractors' guarantees.

2. External Control

This allows the Comptroller General of the Republic to examine and evaluate the internal control of the entities and organizations, and to formulate recommendations for improving the processes.

3. Later Expenditure Control

This consists of the legality, exactness, soundness and correction of the public expenditures of the budget along with the management control that is performed by the Comptroller General of the Armed Force.

4. Management Control

This refers to fulfillment of goals and objectives and the effectiveness and efficiency of the public sector organizations. It is performed by the Comptroller General of the Republic who evaluates results of the Government policies and decisions related to incomes, expenditures and public goods. The Comptroller General of the Republic is empowered to perform management control when it considers it suitable.

I. MISCELLANEOUS

This is a group of budgetary and contracting procedures linked to the Venezuelan procurement process, which have no particular category within the group. The most important are:

1. The Reserve Funds

The reserve funds are quantities of surplus money in the NAF's budget. These funds may be assigned to extraordinary expenditures in each of the forces by previous authorization of the President along with the support of the Comptroller General of the Armed Force [Ref. 10: art. 9.] Likewise, the reserve funds are managed with flexibility inasmuch as they can be handled in foreign exchange to keep the monetary stability threatened by the inflationary process that Venezuela endures. For the execution of the procurement process, the norms contained in the Bidding Law are applicable.

2. Public Credit

The operations of public credit are performed through the Umbrella Law (law that authorizes the executive to contract and execute public credit operations during a determined fiscal year). These public credit operations arose as an economical and social strategy for reorienting the national economy, reducing the fiscal deficit and avoiding the postponement of priority projects within the strategic objectives tracked in the development plans of the Nation. The Umbrella Law empowers the Government either to contract or execute public credit operations from internal or external natures (importation) appointed to finance public projects and programs.

3. Investment Fund of Venezuela

This fund is used by public administration to deposit compromised annual financial resources and to acquire foreign exchange, which is used to pay imported goods and services acquisitions. This procedure allows preserving such resources in dollars protecting them from the currency devaluation.

4. Foreign Military Sales

Foreign Military Sales (FMS) is an agreement used by the United States to sell defense articles and services to foreign friendly governments. The FMS contract is a sale agreement between the U.S. Government and the foreign government. The U.S. Government contracts with a prime U.S. contractor for the required military equipment. The Defense Federal Acquisition Regulation Supplement (DFARS) details the procedures to be followed in negotiation and pricing of FMS contracts and specifies that this acquisition is to be conducted under the same management procurement process as any other defense acquisition [Ref. 8: subpart 225.7301-7303]. In other words, U.S. laws and regulations are applicable even though much of the effort may be conducted overseas. However, in Venezuela the FMS procedures for approval of acquisitions and payments have to follow the rules coming from the Comptroller General of the Armed Forces' Instructive [Ref. 9: art. 77]

5. Special Administered Advance

The special administered advance is a financial figure established in Decree 1821 of August 30th, 1991 ruling the general conditions of complex contracting construction or services executed in more than one budgetary period. This decree foresees or protects the

payments that could expire causing debt or no payment by the responsible party. This procedure is used in construction or for maintenance (aircraft, vehicles, communications systems, etc), which for its magnitude and complexity necessitates a long reparation time that goes beyond and, therefore, cancels the installments foreseen by the Budget Law.

J. SUMMARY

This chapter addressed the Venezuelan defense procurement process from policies, planning of purchase and funding to the different contracting methods used in Venezuela. Venezuelan procurement is governed by a series of rules, laws and controls that have made the procurement process very rigid.

The next chapter will examine factors and realities influencing the procurement process in Venezuela. Factors such as human relations and the complex problems caused by the economic crisis in Venezuela considerably affect the decision-making process. It is important to remember that the erosion of honesty, integrity, and openness can influence the possible acquisition reform environment of the procurement process in Venezuela.

THIS PAGE INTENTIONALLY LEFT BLANK

IV. FACTORS INFLUENCING THE PROCUREMENT PROCESS IN VENEZUELA

A. INTRODUCTION

In Latin America, the process of national transformation was taken over by new political organizations, which not only influenced local people, but also political institutions.

Within this theoretical context, the following analysis attempts to provide preliminary answers to two questions. First, to what extent does this transformation of Latin America reflect the features described above? Second, to what extent have these changes in the process taken place whether they are common across the region or whether they are attributed more appropriately to different national idiosyncratic factors in a global environment?

This analysis uses the historical context of the region-wide economic crisis in the late 1970s through 1990s which led to dramatic reversals in previous patterns of growth, and which forced a series of socially painful adjustments. It is this drastic change of course which leads to the question of how other basic aspects of the Venezuelan society, including institutions, have been affected.

Venezuela has started a process of transformation where variables such as the ideological and the cultural differences of the people are influencing the decision-making process, motivating a new political system under new leadership.

In spite of this, the process needs to be interpreted by implementing a model of analysis of the new situation and the new scenarios, which are composed of factors

identified by key players (Organizational Stakeholders of Venezuela society) and ideological trends giving viability to the process of transformation in the new political system.

B. FACTORS

There are many factors that considerably affect the decision-making in the processes of transformation; however, this research is focused on factors that influence the procurement processes of Venezuela. These factors are specifically political, social, military, budgetary, and legal.

1. Political Factor

The political factor as a whole is the political scene of the organization or community based on a specific ideological concept whose goal is to do primary adjustments in the management of society through the new National Constitution and the legitimization of the national public power. This policy of transition requires the disposition of the population towards authority as part of the legitimization of the system, the presence of management and educated citizens, the influence of cultural knowledge, and the modernization of the political and judicial structure.

On the other hand, political factor is the people's predominant beliefs, attitudes, values, sentiments, and evaluations of the political system of the country and the role of self in this system. [Ref 11: p. 10]

At this time, Venezuela is in a phase of transition and rebuilding in which the politicians are looking for the legitimization of institutions and a means to get public

sector laws and organizations to solve the grave problems that caused the economic and political crisis. Truly, this process is a complex and important task of institutional engineering.

Thus, ...the engineer of any democratic institution must aim for a system that relies upon representation to gain legitimacy. It must have accessibility, [and the] capacity to include the people in the political process. [Ref. 11: p. 7]

Because of this, the procurement organization of public administration, including the NAF, is affected by this stage of transition. People need to legitimize institutions through elections so these institutions can monitor the procurement process from the source selection to the delivery of goods and identify the process as a supportive organizational structure of appropriations, inspections, oversights, approvals, and guarantors of the institutional image of buyers.

2. Social Factor

The transformation of traditional societies causes emotional shock due to the difficulty of discarding old paradigms and developing new ones. As an illustration, the Venezuelan society keeps features of the traditional Latin America community mixed in with the modern Western society with strong influence from the United States. This is particularly true when the new paradigms are radically different. Venezuelan society has grown accustomed to a different politico-social context over the years.

This is apparent in Venezuela's new Constitution, which has a list of rights, especially consecrated social rights. These social rights are presented as reactions to

funding and social problems. This generates a form of denial of the Law because these social rights are of benefit just a select group within society. In other words, there are different judges, different ways of obtaining one's respected rights, and different conflicts with respect to rights which all wreak havoc in society. For instance, the women's rights and the labor's rights always have been legal issues linked to political conflicts when have been introduced in laws.

This nature of the law is something that needs to be observed because it shows that there are contradictions between Venezuela's way of seeing political and judicial reactions and the economic problems faced in the modern world. To illustrate this case, the development of arbitration, is now being enforced a great deal in Latin America and in other parts of the globe, and it is presented as a way to facilitate economic relations.

It is also a rejection of the institutional framework of the countries or regions, or of what is usually referred to as the peaceable settlement of disputes. All these words which are becoming common in international language, are elements that deeply transform the concept of law. In other words, they transform the concept of what society is and the way it faces its conflicts. [Ref. 12: Dec. 1999]

Therefore arbitration, conciliation, and whatever other alternative means for conflict solution are the response of Venezuela along with many firms in the world that want to do business in Venezuela. In the case of the procurement process, the foreign contractor is protected by the arbitration clause in the contract especially in the NAF, and most importantly, these contractors, settling in Venezuela, are a source of increase to the workforce in Venezuela.

Another case that needs to be emphasized is the particular rights that emerge in societies as a way of compensating for society's social difficulties or problems, such as the rights of women, indigenous peoples, physically impaired, etc. These rights are developed in modern constitutions in a very positive manner because they provide compensation for real problems. At the same time, however, these rights are split up into smaller fractions and implemented as a sort of positive discrimination in regards to the difficulties, which some sectors of society encounter in their daily lives. [Ref. 13: Dec. 1999] Notwithstanding, the Venezuelan law, including this important topic, initiates, as a consequence, the implementation of small and disadvantaged business organizations, providing the entrepreneur of a small business an equitable opportunity to compete for public contracts when appropriate or practicable to the interests of the procurement office.

3. Military Factor

The NAF exhibits two major missions: external defense and internal security. Even though the counter-insurgency mission of the 1960s and 1970s just finished with the successful resolution of the conflict with leftist guerrillas, the civilian war that persists in Colombia right now affects the geopolitical situation of Venezuela, especially on its frontiers. In fact, the Colombian problem has been influencing the military activity of Venezuela. For instance, Colombian guerrillas have been linked to the trafficking of narcotics and kidnappings, so the Government created the theater of operations on the borders with Colombia creating tensions for the military activity between the two countries.

Venezuelan military doctrine, in keeping with the perceived role of the armed forces in a democratic state, theoretically emphasizes readiness for external defense. Strategic planners attempt to prepare their forces to engage in a conflict of limited objectives. Tactically, the doctrine calls for the employment of combined forces capable of employing significant firepower and shock capability, while also displaying adequate mobility.

On the other hand, in theory, the internal security mission of the NAF involves the National Guard more than the other branches of Service. This stems from the purely domestic orientation of the National Guard. In practice, however, the delineation of this mission has blurred somewhat. The National Guard, posted in frontier regions, has responded to cross-border attacks and incursions by Colombian insurgent forces, thereby fulfilling an external defense mission. Some observers also have characterized the National Guard efforts against drug trafficking as an external defense effort. By the same token, the Venezuelan Government has accepted the fact that regular military forces, at times, may have to be employed in order to maintain order in major cities. When riots or violent demonstrations break out, the public has routinely demanded a response from the Minister of Defense in addition to the efforts extended by local police.

Because the NAF's ability to implement its doctrine was restrained by equipment shortages, maintenance problems, and other logistical shortcomings, these problems have continued to grow due to the grave Venezuelan economical crisis. The NAF is experiencing a gradual deterioration because the lack of maintenance and repairs has increased since the economic crisis started in 1983. Not only equipment and weapons, but

also the infrastructure are being exposed to the detrimental effects of deterioration because of weary and old installations [Ref. 7: p. 2]. For these reasons, the NAF started a process of self-support and budget control in order to obtain the required resources for developing a good maintenance system.

In addition to that, Venezuela is one of the United States' largest arms customers in Latin America, consistently among the top regional destinations for purchases through the Foreign Military Sales (FMS) and Direct Commercial Sales (DCS) programs. The Venezuelan purchases are not limited to the American market for strategic reasons; therefore, the NAF invests in the European market, especially for weapons and aircraft.

4. Budgetary Factor

Venezuela is a small open economy with a high dependence on Government income from the state-owned oil company, Petróleos de Venezuela S.A. (PDVSA). About 80% of total exports are petroleum and related products. Before 1980, inflation, recessions and deficits were practically unknown in the country. From 1940 up to the mid-seventies, the economy showed high growth with one of the lowest inflation rates in the world.

However from 1986, the fall in oil prices hit the economy causing a monetary devaluation of 96%. In 1989, after a devaluation of the national currency, the bolívar, and a dramatic reduction in international reserves, the Government could not continue to defend the value of its currency. The exchange rate system was switched to a floating rate and the country started a stabilization program with the help of the International Monetary Fund.

By virtue of this critical situation in Venezuela, the economic stagnation created instability among the macroeconomic variables, requiring the Government to reduce and control the growing inflation, and to correct the fiscal deficit, even at the expense of economical growth. The Government reduced public investment and ordered a budget reduction, which for the last three years has been at about 28 % of the original budget project. According to the Central Bank of Venezuela, the fiscal management has caused opposite effects on the global redeeming of the national economy, which indicates the treasury has suffered a break in expenses since 1993. [Ref. 12: Jul. 1999]

Low oil export revenues in 1998 caused the country's budget deficit to increase to over 5% of the Gross Domestic Product (GDP), necessitating continued fiscal cuts for that year of \$1.6 billion from this year's \$20 billion Federal budget, and still leaving an estimated \$9 billion fiscal deficit. Despite the current economic troubles, the Government must continue investing in development through long-term plans for further involvement in the growth of Venezuela. [Ref. 14: Aug. 1999]

Venezuela consistently ranks in the top three sources of U.S. oil imports. The U.S. Government agencies, such as the Export-Import Bank (Ex-Im bank) and the Overseas Private Investment Corporation (OPIC) have supported Venezuelan projects. In June 1999, Venezuela received a \$1 billion loan from the Ex-Im bank, for the purchase of U.S. goods. Venezuela, with its large middle class, strategic industrial location, relatively low energy costs, and vast energy resources will always hold potential for economic growth, and it has had one of the most stable democracies in Latin America for the past 40 years.

5. Legal Factor

The legal environment of Venezuela is affecting the procurement process inasmuch as there is a legal void caused by the expectation of the new National Constitution to change the Venezuelan organizational and legal framework. Therefore, at this moment, it is timely to suggest to the Venezuelan National Assembly some issues that would be important in an acquisition reform through the creation of norms for the procurement and the contracting process.

Legal factors in the procurement process are going to be an important factor in acquisition reform because they will be not only the legal base, but also the policy base, and much of the philosophical base for the public purchasing and contracting program.

In sum, the degree of detail of subject matter to be set out as a consequence of the legal factor should seek to define and control actions related to the procurement process along with those who can influence its performance

C. SUMMARY

This chapter has identified the major factors influencing the procurement process in Venezuela including political, social, military, budgetary, and legal factors; however, the case of Venezuela is vulnerable for two primary reasons. First, Venezuelan lacks adequate participation in the direct exercise of power through decision-making, which is exclusive to the central power. Second this generates a rigid political system that lacks appropriate leadership of the Organizational Stakeholders of Venezuela society.

The next chapter will introduce the Proposed Model Procurement System for the NAF, showing how it can simplify the procurement process by introducing managerial

changes. Therefore, a model procurement system should set forth provisions of purchasing, providing an overall description of the procurement process and the rules and regulations that should be established to accomplish these provisions.

V. MODEL PROCUREMENT SYSTEM PRINCIPLES

A. CONCEPTS

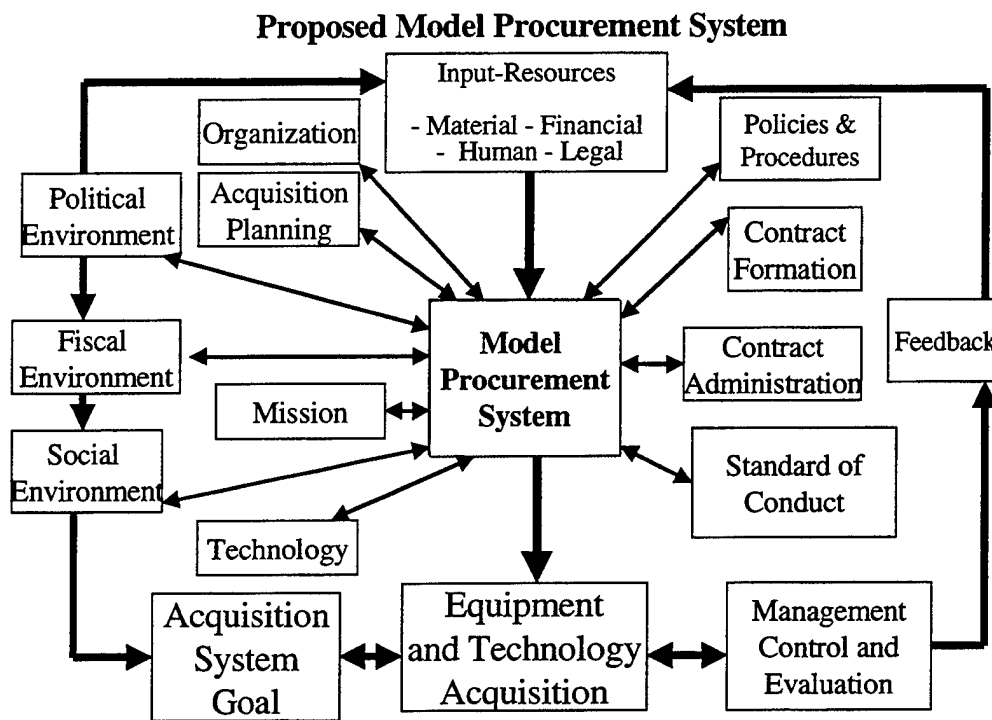
The preparation of the budget is a fundamental process that links the budgetary tenure and procurements with short-term plans. In particular, the acquisition process in the Venezuelan Armed Force is included within the objectives of the nation plans [Ref. 5: p. 3]. In the same way, the organization must obey objectives and strategic guidelines established at a national level and the annual operative plans in order to guarantee an appropriate use of the assigned resources.

As a result of this, administrative procedures are necessary to achieve results through an efficient relationship between received inputs and generated product, and the outputs and obtained outcomes. [Ref. 16: p. 245] This promotes feasibility to the tracked plans contributing to national security and defense. Therefore in the acquisition process, the NAF should implement systems where the problems require integral handling, that is total organizational efficiency, as all complex systems to perform, and not systems with restrained effects. Thus the focus on decision-making must be compatible with a common methodology based on integrated and systematic principles. [Ref.16: p. 8]

The acquisition system in the NAF should represent the following inputs: material, financial, legal and human resources, required in the contracting process. The system, also, should be designed by the different departments that perform the contract projects in accordance with the law. [Ref. 17: art. 15] The process represents fundamentally two different processes. First, on internal process containing all the

procedural, technical and administrative tools required for performing in an acquisition environment. Second, political, economical and social sectors as well as technological, forming the acquisition environment, need to interact externally with the system. On the whole, the process, represented by the acquisition of goods and services, should contribute to the system's objectives and secure the supply of the military organization guaranteeing logistic support to the effort of the national security and defense. Figure 6 depicts the key components of a Proposed Model Procurement System, which will be discussed in the following sections.

Figure 6



Source:

Developed by Researcher

Finally, the acquisition process and fiscal control that creates interdependency among all processes must be recognized as the main component in the system. [Ref. 16:

p. 246] Altogether, the importance of environment and the interrelationship context-system must be accepted as a common objective through the appropriate use of the assigned resources under the supervision of management to obtain administrative efficiency. [Ref. 6: art. 67]

B. POLICIES

The structure of the model procurement system for Venezuela should conform to the existing legal foundation to encourage adjusting innovations that motivate future decision-making. The target of decision-making is to simplify, clarify and modernize the law-governing procurement in Venezuela. Under this context, the model procurement system should contain: objectives, purchasing policies, management, legal tools, structural environment (government-contractor), source selection, contract administration, safeguards and a quality assurance program.

All procurement processes are accountable to a foundation that justifies the process. Therefore, the purchasing activity should be a set of tasks that coordinate, order and execute the acquisition of needed goods, construction, or services at competitive prices consistent with suitable quality and time of performance. Finally, the model procurement system should serve as the core of information on sources of supply, contract administration, source selections, vendor performance, contractor responsibility, quality assurance, and safeguards for the integrity of the purchasing process [Ref. 18: p. 17-19]

C. OBJECTIVES

Venezuelan public administration performs the necessary administrative contract for the normal development of its organization. In a like manner, the NAF has the responsibility of executing the public budget with validated laws to start the acquisition process culminating in contracts under conditions such as buying the right quality, at the right time, at the right price from capable suppliers. The law, furthermore, requires that public purchasing be conducted without favoritism or arbitrariness. Taxpayers expect goods and services to be acquired in an efficient manner, maintained, transferred and eventually disposed of economically and advantageously [Ref. 17: p. 19]. In order to fulfil these requirements the following objectives are proposed:

1. Promote guidelines for procurement procedures and processes that help lawmakers create modern laws in procurement, promoting the development of simplified uniform procurement processes. Officials can have the best intention of making better laws, but they need to be informed about administrative processes. Therefore, lawmakers should appreciate that the first step in the procurement process is to acquire, and as a result of this, lead the process.

2. Permit the continuous development of procurement policies and practices allowing the perfecting of norms. Clear laws should be created to improve or impede any irregular situation during the process.

3. Provide procedures that increase public confidence eliminating fraud and waste in the procurement process. The procedures followed in public procurement should be clear, ethical and trusted by the public Venezuelan.

4. Foster the economical development of the private sector and maximize the use of the public funds. The selection of a national contractor should prevail to increase the economy through public procurement activities. [Ref 3: art. 36]

5. Ensure the fair and equitable treatment of all contractors dealing with the procurement system of Venezuela. Contractors are devoted to gaining and supporting a contract under competitive conditions.

6. Promote appropriate competition within the free enterprise system while respecting the legal limitations contained in the Venezuelan laws.

7. Provide safeguards that maintain the image, quality, and integrity of the organization during the procurement process.

8. Establish policies, procedures, and practices, which provide the Government with property and services of the requisite quality, within the time needed, at the lowest reasonable cost.

9. Provide procedures with clear functions indicating the steps of the procurement process and to minimize subjective elements in the management of procurement information.

10. Contain sufficient flexibility encouraging procedures according to circumstances that occur in any step of the process or during the process evaluation.

11. Support the development of a competent, professional workforce through training and formal education along with recognizing public purchasing functions with legal certification.

12. Present the proposed model procurement system to the Superior Board of the National Armed Force for consideration and implementation in some pilot projects of procurement in the NAF.

D. GOALS

The model procurement system operates to serve the public interest exclusively through goals such as:

1. Optimizing the acquisition process of goods and services of the NAF.
2. Accomplishing the required norms to implement procedures that are successful.
3. Contributing to the appropriate use of the financial resources assigned to the purchasing of the NAF.
4. Achieving favorable economic conditions for the NAF in terms of quality, quantity, opportunity, time and cost.
5. Protecting the institutional image of the NAF with the use of safeguards in the purchasing process.

E. PROCUREMENT ORGANIZATION

The organization faces mandates for providing a structure that facilitates the motivation of people and the coordination of their efforts toward the common goals of the organization. These mandates are imposed from outside through laws and required procedures in the case of the NAF, the use of the assigned resources under the supervision of the management for administrative efficiency [Ref. 6: art. 67]. However,

the location of the purchasing and supply management department within the firm's organizational hierarchy is determined by the importance of the function [Ref. 19: p. 135] being in this case determined by the difference in objectives that each organization pursues.

As a result of this, there will be proposed two different procurement organizations interconnected through official lines for the fulfillment of the mission, which is to satisfy the needs in the NAF with limited assigned economical resources. Then, the involvement of cross-functional authority lines emerges through the evolution of two different kinds of organizations: The National Procurement Service and the Central Logistic Command of the Venezuelan Armed Forces.

1. The National Procurement Service

The National Contracting Service was included in the reformed Bidding Law, but the law refers to a regulatory framework not yet made by the Executive. Therefore, from my viewpoint the implementation of the National Procurement Service (NPS) is required to replace this National Contracting Service, because NPS embraces complementary processes and policy changes, which include radical modifications in the procurement process of Venezuela. For this reason, it is proposed that the NPS consists of a board of five members, a chairman and four directors, appointed by the President of the Republic in Ministry Council [Ref. 3: art 53], to exert the Government procurement policymaking. Each appointed member has to demonstrate sufficient business or professional experience to perform the functions of the NPS. [Ref. 20: p. 9]

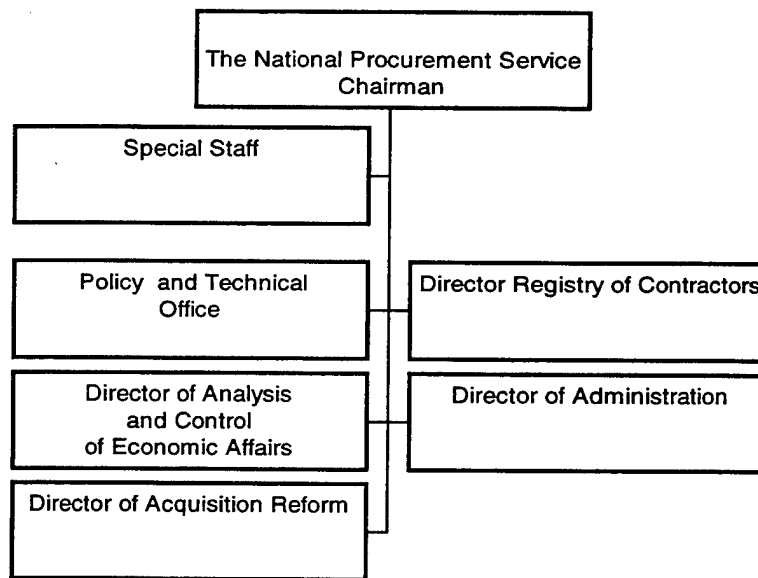
The NPS will be an independent entity within the executive branch appointed to the Ministry of Production and Commerce [Ref. 3: art. 51]; however in my opinion, it should be wholly autonomous as a separate entity within the executive branch. The NPS would ensure the professional integrity of this important policymaking body, and appropriately elevate the entire procurement process in the public administration. [Ref. 20: p. 10] Figure 7 depicts a Proposed National Procurement Service for Venezuela.

The NPS will have the authority and responsibility to promulgate regulations, consistent with the validated Venezuelan Bidding Law, governing the procurement, management, control, and disposal of any and all supplies, services, and construction to be procured by the nation through the following powers:

- a. An internal regulation adopting its own rules and procedures.
- b. Power to judge about procurement affairs when the judicial or administrative authorities require it.
- c. Regulations for conditions and procedures for delegations of procurement authority.
- d. Management of the Venezuelan Registry of Contractors.
- e. Conditions and procedures for the use of source selection methods established by the Bidding Law, including emergency procurements.
- f. Opening or rejection of bids and offers, and the waivers of informalities in bids and offers.
- g. Technical norms for acquisition of goods, services and/or construction.

- h. Definitions and classes of contractual services and procedures for acquisition.
- i. Supervision of storehouse and inventories, including determination of appropriate stock levels and the management of transfer, sale, or other disposal of publicly owned supplies in coordination with the Comptroller General.
- j. Guidelines for use of cost, pricing and negotiation techniques in required contracts.

Figure 7
Proposed National Procurement Service



Source: Developed by Researcher

The NPS may also adopt other such regulations, as it may deem desirable to carry out the provisions of the Bidding Law, such as regulations applicable to cooperative purchasing agreements between the enacting jurisdiction and other jurisdictions. Finally,

the NPS should not adopt operational procedures governing the procurement Offices in the Venezuelan public administration

The chairman and four directors, who oversee the directorate and a special staff office, manage the NPS. The Policy and Technical Office is the executive directorship overseen by the chairman of the National Procurement Service. The Director of Registry of Contractors takes charge of the organization of Venezuelan Registry of Contractors where the Government contractors must be registered. The Director of Analysis and Control of Economic Affairs analyzes the procurement process on prices, costs, adjustments, source selection procedures and international bidding. The Director of Administration takes charge of budget, expenditures and personnel management. The Director of Acquisition Reform is responsible for promoting guidelines of procurement procedures or process, fostering the development and the perfectibility of new processes in the Venezuelan acquisition environment. Lastly, the Special Staff composed of the Public Affairs, the Legal Consul and the Executive secretariat, responsible for advising in acquisition policy, review contract action for legal sufficiency, and interact with acquisition officials on protests, disputes, and other complex issues [Ref. 15: p. 4-7]

2. The Central Logistic Command of the Venezuelan Armed Force

The Commands of Forces were unified globally under an administrative unity, which continues to respect the mission of the individual forces, even though the administration must work in an integral way looking for common objectives [Ref. 4 art. 328]. Under this context, the NAF will have to redo its structural organization for adopting the new concept embodied in the National Constitution, that is creating an

organization that exerts the management of purchasing to accomplish the administrative unity principle. In consequence, it is proposed that the Central Logistic Command of the Armed Force (COLOG) unifies each of the Logistic Commands of the Forces under one Command only, appointed by the Minister of Defense to the Joint Chief of Staff.

The COLOG will exercise the procurement process with vendors and contractors, coordinating requirements with other government departments and agencies, especially with the NPS and the Comptroller General of the Republic, providing timely and quality service to its units (users), and protecting public interest. It must also relate to vendors and agency administrators from a position of management within its responsibilities. Purchasing independence and effectiveness can be affected either positively or negatively by the organization's structure. Factors such as organizational and management philosophy, tradition, the size of the purchasing program, and available resources have a major effect on this consideration. [Ref. 18: p. 21]

Fundamentally, the COLOG needs to be placed at the highest purchasing level in the military hierarchy. The Logistic Commands of the NAF had been operated separately since the Armed Forces were four General Commands each of them with administrative autonomy. In some instances the head of the forces might not have had experience in public contracting, nor have they had the statutory or legal responsibility for purchasing. In other instances, the operating head of the purchasing division used to perform acquisitions without getting specific procedures designated by purchasing unless it depended exclusively on the Bidding Law and certain internal military regulations. For the NAF, where the size and volume of the purchasing activity call for a central office, its

goals and objectives are more likely to be met if a separate unit is established on a equal hierarchy with other major commands within the MOD. For an organization where central purchasing rests with a single individual, the individual needs sufficient authority and responsibility to achieve purchasing purposes. [Ref. 18: p 21]

While it is not possible to set forth a single plan of organization that would be ideal for the NAF, the trend toward the establishment of a central organization is strongly endorsed due to the guidelines established in the new National Constitution. Beyond this, for whatever organization, the function of COLOG must occupy a level of authority, providing the stature necessary to coordinate and deal with the responsibility of the major system acquisition of the NAF, besides purchases of common goods for all the forces, such as clothes, transport and individual weapons. In addition, the COLOG should be designed as an entity of purchasing for all military organizations to prevent, with its authority, purchasing decisions influenced by partisan political pressures or other considerations, representing favoritism.

The COLOG will consist of a board of five members including a Commandant and four directors representing each of the Force Commands (Army, Navy, Air Force and National Guard) to perform the procurement process of major systems and common goods needed by the NAF. The COLOG has a Directorate of six members, which include namely Services, Supply Center, Administration Affairs, Acquisition and Contracts, Operational Test and Evaluation, and Engineering. Each of these directors is organized into technical centers, responsible for the following:

- Management of services such as communications, weapons, construction, clothing and equipment, and transport and information technology.
- Management of budget, expenditures and economic affairs.
- Management of procurement process and contract administration.
- System engineering and integration.

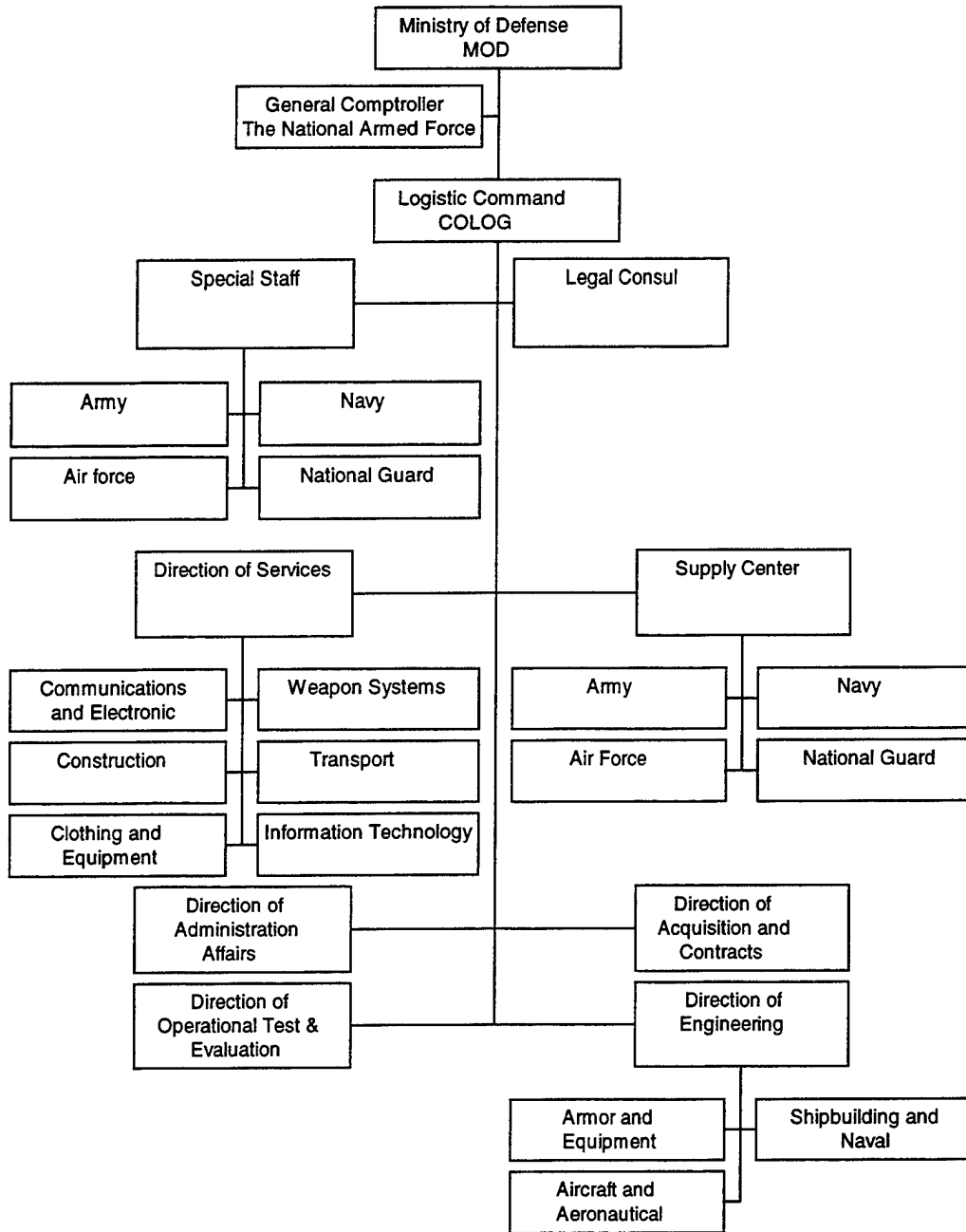
Figure 8 shows the organization of the proposed Central Logistic Command. The COLOG provides centralized procurements for the four Force Commands. This organization should be the desired approach for logistics functions, especially procurements, because it demonstrates the political responsibility of the MOD over the COLOG and the NAF avoiding costly parallel development by the individual Services. With this intention, the COLOG, also, is forced to reduce its personnel in response to declining budgets and number of procurements.

Granting this, COLOG has a specialized entity within the operative organization to perform the procurement process, namely the Director of Acquisition and Contracts. This director is authorized and responsible for advising and monitoring all purchasing, management, control, and disposal of any and all supplies, services, and construction of the COLOG in conjunction with the validated Venezuelan Bidding Law and the military regulation ruling the procurement process. Under these circumstances, the Director of Acquisition and Contracts has the following powers:

- a. It establishes and ensures compliance of major acquisition policies in the NAF.

Figure 8

THE PROPOSED CENTRAL LOGISTIC COMMAND ORGANIZATION



Source:

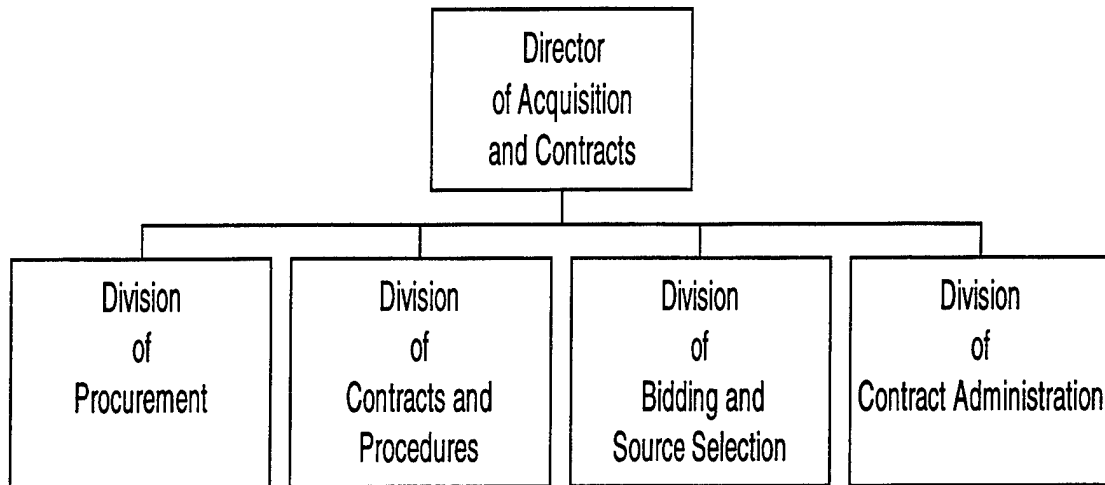
Developed by Researcher, 2000

- b. It may bind the Government only to the extent of the authority delegated to the Direction.
- c. It has overall authority and responsibility for managing the contracting activity, ensuring compliance with the terms of the contract, and safeguarding the interests of Venezuela in its contractual relationship.
- d. It is allowed wide latitude of performance in order to exercise business judgment of the above mentioned responsibilities. Therefore, the Director of Acquisition and Contracts will:
 - Ensure that the requirements of pertinent laws, regulations, etc., have been met.
 - Ensure that sufficient funds are available for obligation.
 - Ensure that contractors receive impartial, fair, and equitable treatment.
 - Request and consider the advice of specialists in audit, law, engineering, transportation, and other fields, as appropriate.
- e. It may delegate authority within a contracting activity to divisions, branches, sections, etc., along organizational lines in the MOD.
- f. It may enter into, administer, or terminate contracts and make related determinations and findings.
- g. It may be required to approve, disapprove, and/or execute: advance procurement plans, solicitations, cost and profit negotiations objectives, negotiations, contracts, contractor quality assurance procedures, contractor

requests for assignment of claims, leasing, travel, or placement of subcontracts, sureties, etc.

Procurement offices are organized to maximize the use of resources in fulfilling their mission to ensure management control consistent with the delegation of responsibilities and authorities, and, to some degree, to reflect the management prerogatives of office heads and their principal assistants [Ref. 15: p. 4-3].

Figure 9
Director of Acquisition and Contracts Organization Chart



Source:

Developed by Researcher

Figure 9 depicts the proposed Director of Acquisition and Contracts organization, which will be discussed in the following section. There are different acquisition organizations among the executive agencies, but for the purposes of this research, the agency is the Director of Acquisition and Contracts who embodies a better organization composed of the following divisions:

Procurement: This division includes a broad knowledge of acquisition policies and procedures necessary to plan, execute, analyze, or evaluate acquisition programs, review proposed contract actions, and develop regulatory material.

Contract and Procedures: This division includes special knowledge of pre-award and post-award procedures. It should plan or conduct the contracting process, from reviewing the purchase request through delivery and contract closeout. In addition, the division has special knowledge and ability to enter into contract negotiations and reach agreements with prospective contractors.

Bidding and Source Selection: This division includes special knowledge of source selection procedures. It should coordinate and analyze proposals, contract changes, repricing agreements, and support price and contract clause negotiation.

Contract Administration: This division includes special knowledge of post-award contracting procedures to ensure compliance with the terms and conditions of contracts.

F. THE ACQUISITION PLANNING PHASE

The purpose of acquisition planning is to decide whether to contract for the requirement and, if this is the decision, lay the groundwork for soliciting and awarding the contract. [Ref. 15: p. 5-3] Therefore, the process requires that

the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency need in timely manner and at a reasonable cost. It includes developing the overall strategy for managing the acquisition. [Ref.15: p. 6-6]

All acquisition military organizations are based upon a need or requirement. The identification of the requirement often results from analyzing potential enemy's

capabilities in relation to one's own. This threat analysis and capability assessment would lead to studies to meet the mission's need.

The acquisition planning phases are all the tasks and steps needed to bring a program to the next major milestone during an acquisition process. The phases provide a logical means of progressively translating broadly-established mission needs into well-defined, system-specific requirements and ultimately into operational, effective, suitable and survivable systems. These acquisition phases are:

1. Determination of Need: This is the first phase in the entire procurement process, which should include:

- Forecasting Requirements: Forecasting needs for supplies and services of the organization through program offices, inventory control points, availability of economical resources attained to ordered quantities, emergencies, prices, conditions and trends of the market, and past acquisitions.
- Acquisition Planning: Drawing up a plan for satisfying needs, the people involved, responsibilities, and processes.
- Purchase Request: Providing the information and approvals necessary for initiating a procurement.
- Funding: Preparing budgets through a planning, programming, and budgeting system.
- Market Research: Collecting and analyzing information about capabilities within the market. The results of market research will be used to arrive at the

most suitable approach of acquiring, distributing, and supporting supplies and services. [Ref. 15: p. 6-14]

2. Analysis of Requirement: This is the second phase in the Acquisition Planning Phase. Its goal is to develop the contract schedule for solicitation and the resulting contract. Analysis of requirements should include requirements documents in clear and concise language for identifying specific work to be accomplished referent to the purchase request.

3. Determining Competition: This is one of the most important phases to be implemented in Venezuela offering a full and open competition among sources that provide supplies and services; therefore, limitations are needed which incorporate factors such as:

- Limitations contained in laws or regulations.
- Requirements for maximum practicable competition.
- Validity and suitability of an unsolicited proposal.
- Requirements for preferred procurement of Venezuelan products.

4. Source Selection Planning: The Bidding Law has always established the different procurement methods in Venezuela; however, the most important in this issue is to foster fair competition in contracting,

full and open competition has become the byword of all government procurement. [Ref 21. P. 2-16].

Competition is an important consideration during the procurement process, therefore a basis for selecting the best offer should include the following factors:

- Price-Related Factors such as costs/prices, foreseeable costs for delays, economic price adjustments, advantage or disadvantages in giving more than one award, taxes, origin of supplies, inflation, and so on.
- Non-priced Evaluation Factors necessary when the quality of performance is as important as, or more important than price, such as past performance of the same or similar work, problem definition, technical approach or methodology, or management capability.
- Method of Procurement or Purchasing, in connection with the Bidding Law establishes procedures and threshold. The competition and negotiation practices should be included in the Law because through these practices, the best offer, may be awarded as the most advantageous to the Government.

5. Contracting: This phase encompasses purchasing, renting, leasing, and/or obtaining supplies or services; therefore, it includes description (but not determination) of supplies and services required, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. In order to be binding, the contract must include the following:

- An offer
- An acceptance
- Consideration
- Execution by competent parties
- Legality of purpose
- Clear terms and conditions (desired but not required legally).

G. THE CONTRACT FORMATION PHASE

A contract is a mutually-binding, legal relationship obligating a seller to furnish the supplies or services (including construction) and a buyer to pay for such supplies or services. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except if otherwise authorized, are in writing. In the contract formation phase, the Government solicits offers and quotes, evaluates offers and quotes received, and awards contracts. The main goal is to build the contract and obtain acceptance by both parties to the contract. [Ref. 15: p. 7-3]

Therefore, the contract formation function progressively provides steps from solicitation and selection of sources to the award of contracts. The steps in contract formation are:

1. **Solicitation of Offers:** An offer is a legally binding promise, made by one party to another, to enter into a contractual agreement, if the offer is accepted. To solicit offers or quotes, the Government invites or requests firm vendor offers, called "bids," to be submitted, and then the offeror or vendor offers and accepts to participate through bids or proposals.

2. **Bid or Proposal Evaluation:** A bid submitted in response to an invitation or request for bids or proposals constitutes an offer. If the Government accepts the bid or proposal, it will be evaluated under the context of economical, technical and performance evaluations. The Government issues its opinion on the offered goods or services, making a decision that results in a contract, assuming all elements of the bid are presented and accepted through the offer. The evaluation of bids and proposals in the procurement

process of Venezuela should include several strategies and tactics through a negotiation plan when the conditions are binding and then improve the bargaining capability of the parties. The negotiation plan should include [Ref 15: p. 7-37]:

- Assignment of roles to Government members on the negotiation team. For instance, use of engineering, accounting, negotiating and legal personnel to address critical issues related to their expertise.
- Negotiations with predetermined positions designed to achieve objectives in spite of the constraints established by the Venezuelan laws.
- Use of preplanned and authorized counter-offers to work toward objectives.
- Offer of concessions of lesser value in exchange for concessions that are of greater value to the Government.

This point will be difficult to accept in the procurement environment in Venezuela for the simple reason that it has never been proposed in public purchase. In reality, lawmakers have not been encouraged to make laws about negotiations for fear or suspicion of possible corruption. However, in my viewpoint, the public administration of Venezuela, due to its rigid procurement process, has lost the opportunity of bargaining for and improving offers that meets the highest expectation of the Government, for instance, a superior technical proposal at competitive prices.

3. Contract Award: An award of the contract is made on the basis of the criteria set forth in the request for proposals to the offerors and /or negotiation of compensation determined to be the best qualified, based on the evaluation factors that are fair and reasonable. Contract award has some required procedures during the

procurement process that can not be obviated since it could affect the institutional image; however, Venezuela inexplicably does not perform all the procedures. [Ref. 8: p. v-6]

The following steps within the contract award are mandatory for fulfillment:

- Debriefing: Offerors should be informed of the basis for the selection decision and contract award. The goal is to provide offerors with information that will help them submit better proposals in the future, through frank and open dialogue. [Ref. 15: p. 7-41]
- Responsibility: A responsible offeror is a business concern that satisfies the following standards:
 - Adequate financial resources.
 - Satisfactory performance record.
 - Ability to perform the work/services required by the contract within the required delivery schedule.
 - Satisfactory record of integrity and business ethics.
 - Necessary organizational experience, accounting and operational controls, and technical skills.
 - Necessary production, construction, and technical equipment and facilities.
 - Qualifications and eligibility to receive an award under applicable laws and regulations.
 - Special standards stated in the solicitation.

- Issuance of Awards and Notices: A description of the process for executing and issuing notices of award and contracts.
- Mistakes in Offers: Offerors often commit errors in estimating costs and calculating a proposed price. [Ref. 15: p. 7-49] In Venezuela mistakes in offers are motives to deny awards to the bidders without right to replication, causing the possible loss of the best offeror. For this reason, the Government should make procedures for mistakes in offers, taking into account the nature and harm of these mistakes.
- Protest: A written objection by an interested party in a solicitation for the acquisition of supplies or services, or a proposed award of a contract when improper conduct by the Government has occurred during the bidding. In addition, the interested party may pursue a complaint with the Comptroller General of the Republic, the Comptroller General of the NAF or the Venezuelan courts.

H. THE CONTRACT ADMINISTRATION PHASE

The contract administration or post-award administration is the last function in the acquisition process. It administers the management of various facets of contracts assuring that the contractor's total performance is in accordance with the contractual commitments, and the obligations of the purchaser are fulfilled. The contract administration includes the basic steps outlined below.

1. Initiation of Work and Modification

The Government and contractor plan and start the work. The Government's tasks involve delegating responsibility for satisfying obligations under the contract, monitoring compliance requirements, modifying the contract, and placing orders against the contract.

The following steps to initiate the work are necessary:

- a. **Contract Administration Planning:** A contract administration plan should contain duties and responsibilities in which the parties comply with all terms and conditions of the contract. The contract administration plan also should provide for:
 - An appropriate level of surveillance or monitoring of the contractor's performance.
 - Timely and proper performance of the Government's responsibilities.
- b. **Post-award Orientation:** A post-award conference, letter, or other form of written communication is composed to aid both Government and contractor personnel in achieving a clear and mutual understanding of all contract requirements, and identifying and resolving potential problems.
[Ref. 22: p. 80]
- c. **Contract Modification:** Modification of any written change in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provision in the terms of a contract are in accordance with the contractual conditions while maintaining the general purpose and effect of the contract intact. [Ref 18: p. 285]

- d. **Delivery Order Contracting:** Conditions in a contract relating to freight, charges, place and time of delivery, or method of transportation, are managed in this step.

2. **Quality Assurance**

Quality assurance is a planned and systematic series of actions designed to provide adequate confidence of a purchased product satisfactorily performing in service.

The steps in assuring quality are:

- a. **Monitoring, Inspection, and Acceptance:** Procedures used by the contracting officer to observe, document, make decisions, and resolve contractor performance. Types of performance problems could be:
 - **Schedule:** Failure to deliver or make timely delivery.
 - **Cost:** Contractor exceeds the cost estimates endangering schedule and performance.
 - **Quality:** Supplies not meeting contract requirements or not expected to meet requirements.
 - **Compliance:** Contractor is not complying with other terms and conditions of the contract.
- b. **Contractual Remedies:** General consideration is given in selecting and applying remedies that best minimizes the impact of contractor problems in performance, delivery, and cost. Remedies should be available on specific clauses of the contract, such as the warranty and inspection clauses for supply contracts. [Ref. 21: p. 14-16]

- c. **Documentation of Past Performance:** The Government should prepare an evaluation of the contractor's performance when the contract is completed. The past performance information is relevant for future source selection purposes, regarding a contractor's actions under previously awarded contracts. [Ref. 22: p. 77] This information includes:
- Record of conforming to contract requirements and standards of good workmanship.
 - Record of forecasting and controlling costs.
 - Adherence to contract schedules, including the administrative aspects of performance.
 - History of reasonable and ethical behavior and commitment to customer satisfaction.
 - Business-like concern for the interests of the customer.

3. Payment and Accounting

Payment and accounting is the process of compensating the contractor when the obligation is to satisfy the Government according to the terms of the contract. The steps in paying contractors and evaluating their accounting systems are:

- a. **Invoices:** A contractor's bill or written request for payment under the contract for supplies delivered or services performed must be approved by the Contracting Officer to ensure that payment (partial or total) is commensurate with the work performed.

- b. Administration Securities: The Contracting Officer must ensure that the contractor keeps all securities required by the contract and obtain new bonds or other securities, when appropriate.
- c. Administration Financing Terms: The main source of funds for procurement and maintenance in Venezuela is public credit or debt through different financial tools, requiring an annex to the contract that the Ministry of Finance handles. Additionally, financing also refers to the payment of a contractor before supplies have been delivered or services rendered: each of them is guaranteed by bonds of advance.
- d. Pricing and Fee Adjustments: Pricing is the process of establishing a reasonable amount or amounts to be paid for supplies or services. The price is related to factors that qualify and determine the most advantageous bid for the Government. These could include:
- Foreseeable cost or delays to the Government resulting from such factors as differences in inspection, locations of supplies, and transportation
 - Changes made, or requested by the contractor, in any of the provisions of the contractual process
 - Advantages or disadvantages to the Government that might result from making more than one award
 - National, state, and municipal taxes
 - Inflationary process that can affect the original price

- Budgetary insufficiency due to an economical crisis affecting the ability to pay
- Origin of supplies, and, if foreign, the application of any national policy in defense of the local market.

Buyers and sellers have different perspectives on price. The Government for instance, considers its primary pricing objective, to be acquisition of supplies and services from responsible sources at fair and reasonable prices pursuant to accounting principles and standards, providing guidance on the acceptability of contractor accounting systems when the contract foresees risk. For sellers, contract pricing has three primary, related objectives: to cover costs, to attain corporate operational objectives, and to make a profit. At the same time, they have several operational objectives that serve as a benchmark for business decisions, such as short-term and long-term profitability, market share, product quality, investment, productivity improvement and so on. Based on these objectives, the following process mechanisms are recommended::

- Automated Metrics System performed through fiscal accounting system which it be implemented by the Comptroller General of the Republic [Ref. 6: art. 5]
- Contractor Register System organized under oversight of the National Procurement Service. [Ref. 3: art. 56]

- Price Analysis method for examining and evaluating total proposed prices without evaluating its separate cost elements and proposed profit. [Ref. 22: p. 82]
 - Cost Analysis method for evaluating and reviewing separate costs elements and profit in an offeror's or contractor's proposal and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency. [Ref. 22: p. 28]
 - Audit through the Procurement Audit Department of the Comptroller General of the Republic who will review of offeror's or contractor's books and financial records to evaluate accuracy, financial risk, or cost reasonableness.
 - Technical Analysis Personnel with knowledge, skill, and experience in proposed resources for calculating costs and prices through reasonable economy and efficiency.
- e. Contractor Debts: A contractor may owe money to the Government for reasons such as:
- Assessment of liquidated damages.
 - Overpayments resulting from discrepancies between the quantities billed vs. the quantities delivered.
 - Government expenses for correcting latent defects in supplies furnished by the contractor.

- Arbitration or judgment by the Comptroller General.

4. Intellectual Property

Intellectual property identifies the obligations of contractors to honor existing patents and data and the corresponding obligation of the Contracting Officer to protect the Government against claims of patent or copyright infringements. [Ref. 15: p. 8-43]

5. Contract Closeout or Termination

Contract closeout or termination is the procedure used for the procurement authority for signing the forms of completion (statement). The contract closeout or termination comprises the following steps:

- a. **Claims:** The operative facts that serve as a basis for a demand of payment, reimbursement, or compensation for injury or damage under law or contract.
- b. **Termination:** The Government reserves the right to get out of a contract, in prescribed circumstances, by including termination clauses in its contracts. [Ref. 15: p. 8-48] There are two principal causes for terminating contracts:
 - **Termination for Convenience:** The Government's requirement has substantially changed or has been cancelled.
 - **Termination for Default:** The contractor fails, or is failing, to perform as required by the contract.
- c. **Closeout:** A contract concludes when all goods delivered or services performed have been accepted, the contractor has been paid, all other

terms and conditions of the contract have been satisfied, and the Government interests are protected.

- d. **Fraud and Exclusion:** Fraud is a felonious act of corruption, or an attempt to cheat the Government or corrupt its agents. When the Government finds evidence of fraud or improper conduct, the contractor must be reported to the Comptroller General. The contractor if convicted of fraud, may be excluded from the list of parties for the Government procurement program. [Ref 15: p. 8-52]

I. SAFEGUARD

The whole procurement process generates money for the contractor whose first interest is economic, but the public sector expects Government operations of all kinds to be open, honest and fair, especially those relative to military procurement. Many cases of corruption in the defense procurement process have caused concern among politicians and the public sector that "something is wrong." [Ref. 2: p. 5] As a result, the Venezuelan National Assembly has delayed assigning funds to defense procurement programs while tedious and extensive hearings are conducted, and the process is continually revised.

In fact, any erosion of honesty, integrity, and openness is more injurious to public purchasing than to most other public pursuits; a shadow of doubt can be as harmful as misconduct itself. Therefore it is imperative to give general guidelines on how to gain public confidence in the process and how to accomplish Government contracts with integrity through the application of ethical standards. In addition, the government must

promote integrity by balancing the objective of fulfilling people's needs with managerial capability and appropriately utilizing the taxpayer's money.

Every governmental jurisdiction needs a strong pronouncement that the Government should reflect trust toward the people. This can be expressed most effectively in the form of a statutory law requiring the adoption and promulgation of ethical standards applicable to all persons involved in conducting and receiving Government business. That being the case, it will probably require organizational and cultural changes.

Government officials involved in the expenditure of public funds have positions of trust and grave responsibility that require the observance of the highest ethical standards officials must act to:

- Earn the highest degree of public trust.
- Display impeccable standards of conduct.

The resulting standards state that Government business shall be conducted in a manner beyond reproach. Except as authorized by the statute or regulations; they shall be conducted with:

- Complete impartiality, with preferential treatment to none. [Ref. 15: p. 9-3]

Subsequently the purchasing process should be carried out with some indispensable elements, giving it clarity and openness during the process. Such elements for reflecting trust toward the public opinion should:

1. Provide public access to the procurement process by requiring the publication of all purchasing legislation and procedures; the public notice of solicitations

of bids and proposals; the documentation of specific actions in the procurement process; public bid openings; and public access to other records except unopened bids, documents with an award pending, trade secrets, test data, or similar proprietary information.

2. Provide criminal penalties for attempting to influence awards through offers of compensation and for accepting such offers; to provide that all guilty parties be financially liable to the Government for any losses that the Government incurred as a result of any award which was influenced.

3. Provide that when contracts are declared void by reason of a conflict of interest, the public employee involved will be liable to the Government both for the amount of any realized monetary gain and any loss that the Government suffered as a result of the contract.

4. Describe the conditions under which the Government may be liable for a contractor's proven costs under a contract, which results from a conflict of interest.

5. Require a bond to protect the Government against losses caused by unethical practices of Government officers or employees who can influence the award of public contracts.

6. Require that a code of ethics or standard of conduct be published governing the performance of Government employees and non-employees associated with Government contracts; to provide for criminal, civil, and administrative sanctions, penalties, and disciplinary actions for violation of such standards as applicable to Government employees or to non-government entities and personnel involved in the public procurement process.

7. Establish personal liability for Government personnel who authorize or make purchases in violation of applicable statutes, rules, or regulations.

8. Authorize purchasing for requiring the submission of cost and pricing data where competition is inadequate or unavailable; to authorize the audit of books and records pertaining to cost and pricing data and to the performance of a contract where price is not firm.

9. Require a procedure, under implementing rules and regulations, for resolving protests and complaints and breach of contract, and authorizing central purchasing to resolve such disputes.

Finally, a standard of conduct describing the relationship between the Government and contractors should stipulate:

- Avoiding any conflict of interest.
- Avoiding the appearance of any conflict of interest.
- Conducting sound business in a professional way there is no reluctance or concern of public disclosure of such business.

J. SUMMARY

This chapter assembled the proposed model defense procurement process for Venezuela implementing a system that covered policies, functions, the acquisition phases, organization and standards of conduct. In spite of Venezuelan procurement is governed by a series of rules, laws and controls this system tries to overcome the inefficiencies evaluated in chapter 3, simplifying the procurement process by introducing managerial changes. In sum, the model procurement system issues provisions of

purchasing and providing an overall description of the procurement process and the rules and regulations that are established to accomplish these provisions.

VI. CONCLUSIONS AND RECOMMENDATIONS

A. INTRODUCTION

The first chapters of this thesis presented various aspects in the acquisition process of goods and services for the NAF in Venezuela. The military procurement process is saturated with outdated rules, laws and controls that have made the procurement process very rigid. This process is inefficient and causes inconsistent handling because each step within the milestone process becomes a barrier to the contracting officer and the Government contractor. Additionally, any effort made by the NAF, thus far, has been insufficient in developing an organized procurement process.

In Chapter V, the research illustrates a model procurement system that contains more efficient and less bureaucratic procedures for the acquisition of goods and services in the NAF. Finally, Chapter VI formulates conclusions about the procurement process in the NAF through an analysis that includes observations taken from the current Venezuelan procurement process, as well as recommendations for improving this process.

B. CONCLUSIONS AND RECOMENDATIONS

This research concludes by establishing deficiencies in the procurement process that are presently practiced by the NAF. Recommendations are offered to improve the overall procurement process.

1. The main conclusion of this research is that the NAF should design a model procurement system based upon the analysis conducted in this thesis.

In view of this fact, the proposed model procurement process for the National Armed Force of Venezuela should be presented to the Venezuelan National Assembly with the purpose of using this research as an orientation tool for the policymakers. Provided this, the National Assembly will have an instrument with valuable acquisition policy guidelines.

2. During the research process, it was discovered that the military organization did not have a manual of procedures that compiled laws, regulations nor applicable statutes pertaining to procurement. Additionally, there is no orientation or training for contracting personnel. This lack of formalized training creates uncertainties, inconsistencies and inefficiencies throughout the NAF Acquisition System.

In contrast, the procedures and processes in this thesis offer the senior leadership an approach and advice for purchasing in Venezuela. The main objective is to review the validity and suitability of purchase requests and to obtain an adequate purchasing process for Venezuelan Armed Force. Therefore, it is recommended that the Government empower a policy organization, as the Proposed National Procurement Service, to exercise policy-making through legal authorization. This organization will be responsible for creating, managing, monitoring and planning procedures for purchasing in Venezuela.

3. There are various interpretations of the laws ruling procurements. This creates difficulty for achieving a harmonious process that guarantees the efficient use of resources.

For this reason, the creation of a National Procurement Service should be a reality beyond a theoretical organization in the law and should be empowered, with all rights,

duties, and authority relating to the executive responsibility of promulgating regulations for public procurement, consistent with the Bidding Law. In fact, the NPS needs to modify or create a regulation that specifically transfers to this policy office the procurement authority to audit and monitor the implementation of its regulations and the legal requirements in public purchasing.

4. The delays in the procurement process of the NAF obstruct the opportune supply of materiel and equipment required for the efficient operation of the military organization. These delays tend to increase prices due to the current inflationary environment within Venezuela.

Because of this, the procurement process in the NAF should function under a double scheme; first the COLOG, the main authority to coordinate and deal with the responsibility of all procurements in the military organization, becomes a central organization translating regulations and rules referent to the acquisition process and creating common procedures for these processes. Second, the Command of Forces should maintain a decentralization of procurement for determined goods and services, inherent to each particular force, providing an opportunity to each Head of Service or managing department to manage its own contracts, after being approved by the milestone authority and coordinated by the COLOG.

5. The current acquisition system of the NAF has deficiencies in the administrative process demonstrated by the prolonged period of time that the military organization spends in the execution of the contracts. This current system interferes with the possibility of continuous improvement in the acquisition process making a constant

and stable management virtually impossible. From my viewpoint, these processes are inefficient and provoke irregular handling because each step within the milestone process becomes a barrier to the contracting officer and the Government contractor. To overcome this inefficient handling, the contractor, who during the source selection phase presents an original contract price, tries by any means to facilitate an early approval of the contract to keep the prices offered. In many cases, bribes and corruption surface putting the performance of the contract in jeopardy because the Comptroller approval, a milestone in the process, delays the handling of the process. This delay in the process can be further attributed to the weak oversight situation that exists in the legislation governing the defense procurement in Venezuela.

By way of contrast, the proposed model procurement system will interact with the internal and external environment, and the decision-makers to accomplish the harmonious and timely implementation of the procurement process. The focus on decision-making will, therefore, be compatible with a common methodology based on integrated and systematic principles. Considering this, the proposed procurement process of goods and services for the NAF is a system where problems should be handled jointly, so that the different organizations intervening in the process maximize the efficiency under a faster and integrated systematic approach.

6. Present research shows that the NAF can initiate organizational changes and implement modern laws and procedures as a proposed procurement model. These modifications depend upon the highest level of decision-making in Venezuela requiring open and honest information on related aspects for specific decisions in the procurement

field. These modifications will facilitate the implementation of the proposed procurement model.

In response to this, the Venezuelan National Assembly should create a specific and comprehensive law of public procurement for governmental units at all national, state and municipal levels, to buy, sell, lease, and exchange goods and services. This purchasing law should contain provisions concerning the purchasing rules, procedures and organizations, such as purchasing authorities who design the policies and practices of purchasing in the country. Consequently, Government, in the revision of the regulatory framework of procurements, should also take a broad-based approach with extensive thought and attention given to the drafting process reducing the probability of misinterpretation and misunderstanding of specific norms and technical words.

Additionally, there are many terms in the Federal acquisition process in the United States that should be applied to the contract law of Venezuela. [Ref. 15: p. 1-19] They are the following:

- Authority to execute contracts: A duly appointed Contracting Officer (CO) should be the only person acting within the scope of his authority on behalf of the Government. Venezuela should change the legal term "Maxim Authority" [Ref. 3: art 109], which in the case of the NAF is the Minister of Defense, to the person responsible for the execution of contracts. The present approach creates an unfair responsibility to the Ministers who have to transfer performance of contract administration to subordinates without its oversight.

- Approvals: In some cases, even though a CO is acting within his or her authority, a contract may not be binding for the Government unless required approvals have been obtained.
- Presumable Authority: The Government is not bound by unauthorized acts of its agents. People who are only representing the CO can not be legally obligated to the Government.
- With Whom the Government May Contract: There are laws and regulations that place constraints on an offeror's eligibility to receive an award.
- Regulatory Controls on the Acquisition Process: The process of soliciting and awarding public contracts should be prescribed in far greater detail in law and regulations than private sector contracting. These laws are the best way to control the procurement process since clear procedures are a tool for the Government, as well as for the contractor, to follow in correcting situations during the execution of the contract.

7. The acquisition workforce in the NAF has civilian and military personnel with backgrounds in law, economics and administration (in the case of civilians), and logistics, technology and administration (in the case of military). In spite of this, the workforce has incorporated little or no background in defense procurement matters due to its lack of specialized training in this field. I considered this lack of knowledge one of the major causes of delays in the process because the Comptroller Authority does not have confidence in the capability of its personnel. There is a high turnover rate of personnel as a result of changes in the directors of acquisition who always bring in their own teams to

work in this unique environment. To put it briefly, the area of managing the procurement process in the defense organization lacks the ability and the structure to train the personnel to do the work.

On the other hand, personnel exhibiting the highest standards of professional excellence are required to develop processes in an acquisition environment. Therefore, the Government should establish policies and procedures for the effective management (including promotion, education, training, and career development) of professionals serving in acquisition positions within public administration. Furthermore, regulations should apply for military and civilian personnel occupying acquisition positions. Their individual credentials should also meet mandatory education, training, and experience standards established for the career level (college and university) in the acquisition field.

8. The procurement offices have undergone transformations since the enactment of new laws in recent years. However, these transformations are mostly the results of regulatory ordinances and are not the result of efficient studies and analysis of the processes. The incipient use of electronic means and the excessive workload of the procurement processes make the procurement offices a typical bureaucratic governmental office where an acquisition project can remain for a long time waiting an analyst's recommendations.

Considering this, Venezuela must improve its acquisition environment, especially in modern tools of management, such as automation systems, strategic management, national partnership, learning and reengineering government system. These tools should be exploited to develop and integrate systems, which monitor and track a streamlined

process. Additionally, techniques should be recommended, such as market research, integrated product teams and past performance combined with electronic document proposals and offers through the internet, electronic oral proposals and presentations, and negotiations. These initiatives would reduce cycle time and costs.

9. Although the Venezuelan Government is making efforts to change political, social and economical issues. It should emulate the efficiency and practices of world class commercial organizations.

Therefore, the Government should implement commercial applications, such as negotiation, pricing and cost analysis, competition, and market research. These commercial practices will produce better results in the public acquisition process when the procurement office obtains competitive prices consistent with a suitable standard of quality, process time, and performance emulating the same condition of the private sector.

10. In any event, the goal of a public procurement or contracting process primarily rests on sound design and effective implementation of a good conceptual base, a legal procedural framework, and the effective implementation of a commensurate budget, qualified personnel, and categorical executive and legislative support, together with capable management.

Under these premises, I propose procedures, policies and administrative tools for increasing the feasibility of an improved procurement system by presenting the proposed model procurement process to the National Armed Force of Venezuela.

C. ANSWERS TO THE RESEARCH QUESTIONS

In order to accomplish the purpose of this research, the following research questions were answered:

1. Primary Research Question

What are the essential elements of the model procurement process for the National Armed Force of Venezuela or how might the procurement process be improved?

The current thesis broaches a series of considerations that justify creating a manual for the implementation of the model procurement process, containing the following essential elements:

- Objectives: The main objective in the model procurement process is to establish procedures for the acquisition and contract of goods and services of the NAF.
- Scope: The established procedures of the manual are applicable to the acquisition and contract of goods and services of the NAF through the COLOG and the Command of Forces.
- Structure: This manual project should be structured containing the following elements:
 - Policies: The organization should be based upon policies that are implemented by the Government providing guidance for reforming and streamlining the acquisition management process.
 - Objectives: The model procurement process should be based on goals to be achieved during the process, satisfying the needs of the military organization.

- The acquisition phases: As addressed in Chapter V, the premises of each phase, introducing managerial changes in the procurement process, will reduce cycle time and costs.
- Safeguard: The Government should create mandatory guidelines on how to gain public confidence in the procurement process and how to accomplish Government contracts with integrity through the application of ethical standards.

2. Secondary Questions

a. What is the current procurement process for the Armed Force of Venezuela?

This question was answered in Chapter III where the Venezuelan procurement process was thoroughly described. It showed how the different frameworks play a role in structuring defense procurement, and also how some of these frameworks have more influence on the process than others, such as the Comptroller General organization. This organization has a big impact on the milestone approval in order to build public trust. The expertise of the Comptroller General supplants; through its oversight, the lack of training in the personnel and the deficiencies in the processes of purchasing previously mentioned in Chapter III.

b. What concepts and factors are necessary in a model procurement process?

Venezuela, in government procurement, is outdated, even though the actual Law has had certain success in performing procurement. Therefore, it is important to offer a modern managerial process in the procurement, such as:

- The procurement system should be changed to achieve a dynamic and systematic process that links procurement procedures, laws and oversight with efficiency and effectiveness during the whole process.
- The management of the procurement process should be divided in phases to allow effective handling during the approval of each phase of the procurement process.
- Venezuela should use modern tools of management, such as automation systems, strategic management, national partnership, learning and reengineering government system along with techniques, such as market research, integrated product teams and past performance combined with pricing analysis and negotiations. These initiatives would reduce cycle time and costs

c. What issues must be resolved in order for the current Venezuelan Armed Force procurement process to be fashioned after the model procurement process?

The expectation of this thesis was to promote the development of public purchasing in Venezuela, including new procedures in the best interest of the Government while keeping old procedures and rules that have worked so far. Therefore, there are three suggested improvements for the Venezuelan Armed Force procurement process that are included in the model procurement process:

- To adapt the laws to modern managerial practices of the procurement process such as: analysis of costs during contract performance, negotiations before, during and after awarded contract; implementation of the best value term; utilization of integrated product teams and partnership, along with commercial practices.

- To change the acquisition framework of the NAF adapting the proposed procurement system with the implementation of policies, objectives, acquisition phases and standards of conduct.
- To create the National Procurement Process designed with policy-making functions at the National level, and the Central Logistic Command of the Venezuelan Armed Force that coordinates and handles the responsibility of the major acquisition system of the NAF, purchases common goods for all the forces, and translates policies and regulation for all the military organization.

d. What significant action must be achieved in order to reform the Venezuelan procurement process in line with the model procurement process?

The Venezuelan procurement process should undergo considerable changes in procedures, organization and philosophy. The modern concept of a procurement process is called the overall management of equipment and services acquisition from the beginning of the requirement to the maximum use and disposal. The emphasis in purchasing is changing from one of buying with strict controls to one of efficient procedures and oversight, with cost and cycle time reduction as a prime objective and the use of techniques and tools of private procurement management. Finally, the Venezuelan procurement process becomes a concept that can be called performance purchasing where the degree of performance is measured by the efficiency and effectiveness of obtaining the goods and services with the price and quality determining the most advantageous for the purchasing organization.

D. SUGGESTIONS FOR FURTHER RESEARCH

This thesis identified some areas that merit additional research. These areas are:

- Expand the scope of this study by the creation of a manual for the acquisition process of Venezuela.
- Conduct a study of the Defense Acquisition Organization of Venezuela: A Proposed Workforce Training.
- Investigate the effects of the implementation of negotiation techniques in the Venezuelan procurement process.
- Determine the degree of impact of using commercial practices in the Venezuelan Procurement Process.
- Apply extensive contract administration procedures presently used in the United States of America to the current Venezuelan contract administration. Conduct a comparative analysis.

THIS PAGE INTENTIONALLY LEFT BLANK

LIST OF REFERENCES

1. Brewer Carias, Allan, "Administrative Law", Caracas: Legal Editorial Venezuela, 1992.
2. Gutierrez U, Isidro, "Manual of Procedures to follow in the Contracts for the Acquisition of Goods and Services to Central Level in the National Armed Forces," Thesis, Venezuelan Superior School of War Air Force. April 20, 1998.
3. Venezuelan Congress, "Venezuelan Bidding Law," Decree No 296. Official Gazette N° 5,386 extraordinary of October 11, 1999.
4. Assembly Constituency, "Constitution of the Bolivarian Republic of Venezuela," Official Gazette N° 36,860 of December 30, 1999.
5. CORDIPLAN (Coordinating and Planning Office), "The Armed Force's commitment with the National Development." IX Nation Plan. 1994.
6. Venezuelan Congress, "Organic Law of the Comptroller General of The Republic", Official Gazette of Venezuela N° 5,017 extraordinary of Dec 13, 1995.
7. Segovia A, Reinaldo, "Arms Transfers to Venezuela: A comparative and Critical Analysis of the acquisition Process (1980-1996)," Master Thesis, Naval Postgraduate School, March 1999.
8. D'alta Marcano Juan . "Evaluation of the Acquisition Process of Goods and Services for the Venezuelan Army," Thesis, Venezuelan Navy College, May 16, 1996.
9. Defense Federal Acquisition Regulation Supplement, Part 225.73 Acquisition for Foreign Military Sales (Revised September 14, 1999).
10. Presidency of the Republic, "Regulation for the Acquisition of Goods and Services for the National Armed Forces. Decree 175." Official Gazette of Venezuela N° 36,718 of June 8, 1999.
11. Diamond, Larry. *"Introduction: Political Culture and Democracy,"* (Boulder, CO.: 1993).
12. Businews, "Venezuela Businews® Information Service", Summary Jan-Mar 2000 [businews@telcel.net.ve Businews - SEDECO]
13. SELA (Latin American Economical System), "Economic and Social Policies Analysis 1997-1999," [http://lanic.edu/project/sela/eng_actv/engativ.5.htm. March 2000]

14. Berend, Rossen, "Venezuela Supervision is the key to Strengthening Banks."
[[HTTP/www.usis.usemb.se/ERT/e15/case](http://www.usis.usemb.se/ERT/e15/case). HTML. August 1999.]
15. Federal Acquisition Institute, "The Federal Acquisition Process (FAP)," March 1999.
16. Van Gigch, John P., "General Theory of Systems," Mexico. Editorial Trilla 1997
17. Venezuelan Congress, "Organic Law of Budgetary Regimen," Official Gazette N° 4,239 Extraordinary of December 20, 1990.
18. The Council of State Governments, "State and Local Government Purchasing," Iron Work Pike, 1983.
19. Dobler Donald and Burt David, "Purchasing and Supply Management," 6th ed., The McGraw-Hill Companies, 1996.
20. American Bar Association, "The Model Procurement Code for State and Local Governments," Department of Justice of February 1979.
21. Arnavas, Donald P. and Ruberry, Willian J., *Government Contract Guidebook*, 2d ed. Federal Publications, 1994.
22. General Service Administration Website, "Glossary of Acquisition Terms," [http://www.gsa.gov/staff/v/guides/gp_12_98. Pdf, 17 October 1998.]

BIBLIOGRAPHY

- Arnavas, Donald P. and Ruberry, Willian J, Government Contract Guidebook, 2d ed. Federal Publications, 1994.
- Assembly Constituency, Constitution of the Bolivarian Republic of Venezuela Official Gazette N° 36,860 of December 30, 1999.
- Brewer Carias, Allan, "Administrative Law", Caracas: Legal Editorial Venezuela, 1992.
- Businews, "Venezuela Businews® Information Service", Summary Jan-Dec 1999 businews@telcel.net.ve (Businews - SEDECO)
- Colyer Timothy W., "A Dictionary of Acquisition and Contracting Terms," Thesis, Naval Postgraduate Scholl, June 1997.
- Comptroller General of the Republic's Office, "Judgments of Legal Services Direction of the Comptroller General of The Republic," volume IX, Ed Comptroller General's Office, Dr Rafael Arias, Director, 1997-1998.
- D'alta Marcano Juan . "Evaluation of the Acquisition Process of Goods and Services for the Venezuelan Army," Thesis, Venezuelan Navy College, May 16, 1996.
- Federal Acquisition Institute, "The Federal Acquisition Process (FAP)," March 1999.
- Kaminski Paul, "5000 Series," Department of Defense, March 15, 1996.
- Gultekin Metin, "Foreign Military Sales Versus Direct Commercial Sales," Thesis, Naval Postgraduate School, September 1998.
- Gutierrez U, Isidro, "Manual of Procedures to follow in the Contracts for the Acquisition of Goods and Services to Central Level in the National Armed Forces," Thesis, Venezuelan Superior School of War Air Force. April 20, 1998.
- Kilpatrick Robert, "Multiyear Procurement: An Analysis of the Relationship Between Congress and The Department of Defense in an Acquisition Reform Environment," Thesis, Naval Postgraduate School, December 1998.
- Latin American Political Affairs. "Venezuela: Former Coup Hugo Chávez Front Runner for Presidential Elections," NotiSur. 07 August 1998. Available [Lexis/Nexis]: NSAMER/CURNWS/. [10 August 1998.]
- Office of the President of Venezuela, Presidential decree N°175 of Norms for the Acquisition of War Materiel and Equipment for the National Armed Forces through Credit Public Operations, Official Gazette N° 33,008 of June 27, 1998.
- Presidency of the Republic, Venezuelan Bidding Reform Decree-Law Official Gazette N° 5,386 of October 11, 1999.

Segovia A, Reinaldo, "Arms Transfers to Venezuela: A comparative and Critical Analysis of the acquisition Process (1980-1996)." Thesis, Naval Postgraduate School, March 1999.

Schuyler, George W, "Perspectives on Venezuelan Democracy," Latin American Perspectives, 23 (summer 1996).

Sutton David, "Multiyear Procurement: A Desktop Guide," Thesis, Naval Postgraduate School, June 1997.

Venezuelan Congress, Constitution of the Republic of Venezuela, Official Gazette N° 662 extraordinary of January 23, 1961.

Venezuelan Congress, Venezuelan Bidding Law, Official Gazette N° 34,528 of August 10, 1990.

Venezuelan Congress, Organic Law of Budgetary Regimen, Official Gazette N° 4,239 Extraordinary of December 20, 1990.

Venezuelan Congress, Organic Law of Budgetary Regimen an its Partial reform, Official Gazette N° 4,718 Extraordinary of April 26, 1994.

Venezuelan Congress, Organic Law of the National Armed Forces, Official Gazette N° 4,844 Extraordinary of February 22, 1995.

Venezuelan Congress, Organic Law of the Comptroller General of The Republic, Official Gazette of Venezuela N° 5,017 extraordinary of Dec 13, 1995.

Venezuelan Congress, The Commercial Code, Official Gazette. N° 475 Extra. of Dec 21, 1955.

Wegler Michael K., "Comparison of the Acquisition Systems of the Federal Republic of Germany and The United States Governments," Thesis, Naval Postgraduate School, December 1998.

INITIAL DISTRIBUTION LIST

	No .of copies
1. Defense Technical Information Center 8725 John J. Kingman Rd., STE 0944 Ft. Belvoir, VA 22060-6218	2
2. Dudley Knox Library..... Naval Postgraduate School 411 Dyer Rd. Monterey CA, 93943-5101	2
3. Dr. David V. Lamm Code SM/Lt Naval Postgraduate School Monterey CA, 93943-5101	5
4. CDR Jeffrey Cuskey, Code SM/Ck Naval Postgraduate School Monterey CA, 93943-5101	2
5. Venezuelan Military Attaché 2437 California Street, NW Washington D.C. 20008	8
6. Col Yovany Rodriguez..... 3119 Vaquero Pass, San Antonio Texas	1